

RESOLUTION APPROVING THE EXECUTION OF A LOAN AGREEMENT BETWEEN THE CITY OF FORT WAYNE AND CERC-MCMILLEN APARTMENTS LIMITED PARTNERSHIP, AN ILLINOIS LIMITED PARTNERSHIP, AND APPROVING SUPPORTING DOCUMENTS AND FURTHER APPROVING THE EXECUTION OF A CONTRACT FOR LOAN GUARANTEE ASSISTANCE UNDER SECTION 108 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974 AS AMENDED, 42 U.S.C. SECTION 5308 WITH THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT, TOGETHER WITH A FISCAL AGENCY AGREEMENT WITH CHASE MANHATTEN BANK AND FURTHER APPROVING THE PLEDGE OF CERTAIN SECURITIES FOR THE SECTION 108 LOAN GUARANTEE ASSISTANCE.

**WHEREAS**, CERC-McMillen Apartments Limited Partnership, an Illinois limited partnership, has contracted to purchase the McMillen Apartments to renovate the same and to operate them for low income housing; and

**WHEREAS**, the City of Fort Wayne proposes to enter into a loan agreement with CERC-McMillen Apartments Limited Partnership, an Illinois limited partnership, which agreement calls for the loan of \$1,200,000.00 to said borrower from Section 108 Housing and Community Development Act evidenced by a subordinated mortgage and note and secured by a junior mortgage and security agreement with assignment of rents; and

**WHEREAS**, funds for the loan are being provided by the Department of Housing and Urban Development under Section 108 of the Housing and Urban Development under Section 108 of the Housing and Community Development Act of 1974 as amended, 42 U.S.C. Section 5308; and

1                   **WHEREAS**, obtaining of such funds under the act is conditioned upon the City entering into a  
2                   contract with the Secretary of Housing and Urban Development for loan guarantee  
3                   assistance and into another contract with Chase Manhattan Bank for financial agency  
4                   management of the City's repayment under said contract; and

5                   **WHEREAS**, said contract requires the City assign present and future grants and allocations  
6                   under Section 106 of the Housing and Community Development Act above cited, as  
7                   well as program income directly generated from the use of the guaranteed loan funds  
8                   as well as the other security received from the borrower.

9  
10                  **NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF**  
11                  **FORT WAYNE, INDIANA:**

12  
13                  **SECTION 1.** The Common Council finds, determines, ratifies and confirms the attached  
14                  contract for loan guarantee assistance under Section 108 of the Housing and  
15                  Community Development Act of 1974 as amended, 42 U.S.C. Section 5308, the  
16                  attached financial agency agreement, the attached loan agreement, the attached  
17                  subordinated mortgage note, and the attached junior mortgage and security  
18                  agreement with the assignment of rents, are in the best interest of the City of Fort  
19                  Wayne and its taxpayers.

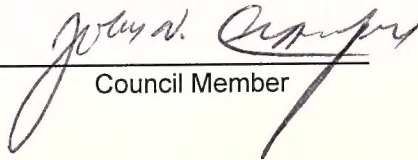
20  
21                  **SECTION 2.** The Mayor and City Clerk are hereby authorized and directed to executed and  
22                  deliver in the name of and on behalf of the City, the aforesaid documents substantially  
23                  in the form submitted to this Council which are hereby approved in all respects.

24  
25                  **SECTION 3.** The Mayor and City Clerk and each of them is hereby authorized and directed in  
26                  the name and behalf of the City to execute any and all agreements, documents,

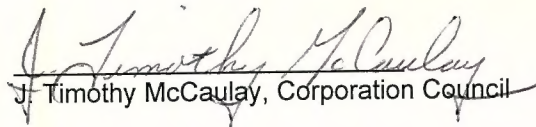


instruments, and perform any and all acts approved and do any and all things deemed  
by them or either of them to be necessary or desirable in order to carry out and comply  
with the intent, conditions, and purposes of this Resolution and the contracts herein  
above approved.

**SECTION 4.** This Resolution is in full force and effect from and after its passage and any and  
all necessary approval by the Mayor.

  
Council Member

APPROVED AS TO FORM AND LEGALITY

  
J. Timothy McCaulay, Corporation Council



# The City of Fort Wayne

Paul Helmke, Mayor

## Memorandum

To: MEMBERS OF COMMON COUNCIL  
From: R. DAVID BOYER, ASSOCIATE CITY ATTORNEY  
Date: October 14, 1996  
Re: CERC-MCMILLEN LIMITED PARTNERSHIP

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Enclosed please find a Resolution authorizing the financing package for CERC-McMillen Limited Partnership to acquire the McMillen Park Apartments using proceeds from a HUD loan of \$1,200,000.00.

The Resolution confirms that the Project and the proposed financing will be in the public interest and also constitutes official action approving the execution of documents and the pledges of securities including a Subordinated Mortgage Note, a Junior Mortgage and Assignment of Rents, future HUD grants and program income arising from repayment of the loan.

A failure to pass the Resolution could cause the borrower to abandon the project because of uneconomic interest expenses. This project will improve the low income housing stock in the City.

RDB:dcb

**DIGEST SHEET**

**TITLE OF ORDINANCE** RESOLUTION

**DEPARTMENT REQUESTING ORDINANCE** COMMUNITY AND ECONOMIC DEVELOPMENT

**SYNOPSIS OF ORDINANCE** Resolution approves a loan to CERC-McMillen Limited Partnership in the amount of \$1,200,000.00 for the acquisition and renovation of McMillen Apartments. It further approves agreements to acquire the Loan Funds by way of a HUD Section 108 guarantee and approves the documents to put the project in place as well as authorizing the execution of the necessary documents.

**EFFECT OF PASSAGE** CERC-McMillen Limited Partnership will be able to acquire and with other funds renovate the McMillen Park Apartments providing the City with upgraded low income housing stock.

**EFFECT OF NON-PASSAGE** It is doubtful if the project will proceed.

**MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS)** None. The loan agreement calls for City costs to be reimbursed by the loan recipient.

**ASSIGNED TO COMMITTEE (PRESIDENT)** \_\_\_\_\_



Read the first time in full and on motion by Crawford,  
and duly adopted, read the second time by title and referred to the  
Committee on Finance (and the City Plan Commission  
for recommendation) and Public Hearing to be held after due legal notice, at  
the Common Council Conference Room 128, City-County Building, Fort  
Wayne,, Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_

M., E.S.T.

DATED: 10-15-96

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Crawford,  
and duly adopted, placed on its passage. PASSED LOST  
by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT:
TOTAL VOTES	8			1
BENDER	✓			
CRAWFORD	✓			
EDMONDS				✓
HALL	✓			
HAYHURST	✓			
HENRY	✓			
LUNSEY	✓			
RAVINE	✓			
SCHMIDT	✓			

DATED: 10-22-96

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,  
Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)

(SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. B-61-96

on the 23rd day of October, 19 96

ATTEST:

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

DD Schmidt  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on  
the 24th day of October, 19 96,  
at the hour of 10:30 o'clock P. M., E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 24th day of October,  
19 96, at the hour of 6:00 o'clock P. M., E.S.T.

Paul Helmke  
PAUL HELMKE, MAYOR

BILL NO. R-96-10-06

REPORT OF THE COMMITTEE ON  
FINANCE  
THOMAS C. HENRY - JOHN N. CRAWFORD - CO-CHAIR  
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS

REFERRED AN ~~(ORDINANCE)~~ <sup>(RESOLUTION)</sup> approving the execution of a  
loan agreement between the City of Fort Wayne and Cerc-McMillen  
Apartments Limited Partnership, an Illinois Limited Partnership - agreement  
with Chase Manhattan Bank

HAVE HAD SAID ~~(ORDINANCE)~~ <sup>(RESOLUTION)</sup> UNDER CONSIDERATION  
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID  
~~(ORDINANCE)~~ <sup>(RESOLUTION)</sup>

DO PASS

DO NOT PASS

ABSTAIN

NO REC

John A. Crawford

D. B. G.

Thomas C. Henry

Charles E. Henry

Dedee Hall

Martin A. Bunch

Thomas Haysburn

Colleen Davis

DATED: 11-22-96

Sandra E. Kennedy  
City Clerk



Fax to  
Mrs. Wheeler  
at 773-493-1578

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Letter to  
Mrs. Green





## THE CITY OF FORT WAYNE

CITY-COUNTY BUILDING • ROOM 122 • FORT WAYNE, INDIANA 46802 • 219-427-1221

SANDRA E. KENNEDY, CITY CLERK

October 17, 1996

Kimberly Green  
LIHTC Administrator  
Indiana Housing Finance Authority  
115 Washington St.  
Suite 1350, South Tower  
Indianapolis, IN. 46204-3413

Community Economic Redevelopment Corporation  
Stephen A. Wheeler  
Executive Director  
5519 South Dorchester Avenue  
Chicago, IL 60637-1720

RE: McMillen Park Apartments  
IN-96-01700

Please be advised that the resolution approving the execution of a loan agreement between the City of Fort Wayne and Cerc-McMillen Apartments Limited Partnership, an Illinois Limited Partnership, and approving supporting documents and further approving the execution of a contract for loan guarantee assistance under Section 108 of the Housing and Community Development Act of 1974 As Amended, 42 U.S.C. Section 5308 with the Secretary of Housing Urban Development together with a fiscal agency agreement with Chase Manhattan Bank and further approving the pledge of certain securities for the Section 108 Loan Guarantee Assistance came before the Finance Committee of the City Council of the City of Fort Wayne, at a Special Session on October 15, 1996.

This resolution received a do pass recommendation from Common Council and will be up for final passage at the regular session of Common Council on October 22, 1996.

Sincerely,

Sandra E. Kennedy  
City Clerk





## THE CITY OF FORT WAYNE

CITY-COUNTY BUILDING • ROOM 122 • FORT WAYNE, INDIANA 46802 • 219-427-1221

SANDRA E. KENNEDY, CITY CLERK

November 5, 1996

Kimberly Green  
LIHTC Administrator  
Indiana Housing Finance Authority  
115 Washington St.  
Suite 1350, South Tower  
Indianapolis, IN. 46204-3413

Community Economic Redevelopment Corporation  
Stephen A. Wheeler  
Executive Director  
5519 South Dorchester Avenue  
Chicago, IL 60637-1720

RE: McMillen Park Apartments  
IN-96-01700  
Bill No. R-96-10-06 ---- Resolution No. R-61-96

Resolution approving the execution of a loan agreement between the City of Fort Wayne and Cerc-McMillen Apartments Limited Partnership, an Illinois Limited Partnership, and approving supporting documents and further approving the execution of a contract for loan guarantee assistance under Section 108 of the Housing and Community Development Act of 1974 As Amended, 42 U.S.C. Section 5308 with the Secretary of Housing Urban Development together with a fiscal agency agreement with Chase Manhattan Bank and further approving the pledge of certain securities for the Section 108 Loan Guarantee Assistance, was presented to Common Council for final vote on October 22, 1996.

This resolution received a DO PASS from Common Council at the regular session, October 22, 1996, approved and signed by the Mayor on October 24, 1996.

Sincerely,

  
Sandra E. Kennedy  
City Clerk

**JUNIOR MORTGAGE  
AND  
SECURITY AGREEMENT  
WITH  
ASSIGNMENT OF RENTS**

THIS JUNIOR  
MORTGAGE AND SECURITY  
AGREEMENT WITH  
ASSIGNMENT OF RENTS  
("Mortgage") dated as  
of October 1, 1996 from  
CERC - McMillen

Apartments Limited Partnership, an Illinois limited partnership  
("Mortgagor"), with a mailing address of 5519 South Dorchester  
Avenue, Chicago, IL 60637, to and for the benefit of the City of  
Fort Wayne, Indiana with a mailing address of City of Fort Wayne -  
Department of Community Development, 1 Main Street, Room 830, Fort  
Wayne, Indiana 46802, (hereinafter referred to as "Mortgagee").

**W I T N E S S E T H    T H A T:**

WHEREAS, Mortgagor has executed and delivered to Mortgagee  
that certain Subordinated Mortgage Note and Loan Agreement payable  
to Mortgagee bearing even date herewith in the principal amount of  
\$1,200,000.00 (said Note and any and all extensions and renewals  
thereof, amendments thereto, and substitutions or replacements  
therefor is referred to herein as the "Note") pursuant to which  
Mortgagor promises to pay said principal sum (or so much thereof as  
may be outstanding at the maturity thereof) on or before July 1,  
2016, together with interest on the balance of principal from time  
to time outstanding and unpaid thereon at the rate and at the times  
specified in the Note as part of the purchase price of the  
"Mortgaged Premises" (as defined below) pursuant to that certain  
Real Estate Sales Contract dated as of November 29, 1995, (the  
"Purchase Contract") between Community Economic Redevelopment  
Corporation and McMillen Park Apartments Land Trust; and

**This Instrument Prepared By  
and After Recording Return to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Permanent Index Numbers:**

See Exhibit "B"

**Address of Property:**

3209 Plaza Drive  
Fort Wayne, Indiana

WHEREAS, the real estate that is encumbered by this Mortgage  
and which forms part of the "Mortgaged Premises" (as defined below)  
consists of real estate located in Fort Wayne, Indiana, as more  
particularly described in GRANTING CLAUSE I below; and



WHEREAS, the Mortgagor has expended considerable effort to promote its goal of creating desirable affordable housing for low income households suitable for elderly and handicapped people;

WHEREAS, this Mortgage, the Note and all other instruments and documents evidencing or securing the indebtedness evidenced by the Note are hereinafter collectively referred to as the "Loan Documents"; and

WHEREAS, the Mortgaged Premises to become subject to an existing mortgage of \_\_\_\_\_ Bank ("Bank") pursuant to that certain Mortgage and Security Agreement with Assignment of Rents ("Bank Mortgage") dated \_\_\_\_\_, 1996, which Bank Mortgage secures Bank's loan ("Loan") to Mortgagee; and

NOW, THEREFORE, to secure (i) the payment when and as due and payable of the principal of and interest on the Note or so much thereof as may be advanced from time to time, (ii) the payment of all other indebtedness which this Mortgage by its terms secures and (iii) the performance and observance of the covenants and agreements contained in this Mortgage, the Note and any other Loan Documents, (all of such indebtedness, obligations and liabilities identified in (i), (ii) and (iii) above being hereinafter referred to as the "indebtedness hereby secured"), the Mortgagor does hereby grant, sell, convey, mortgage and assign unto the Mortgagee, its successors and assigns and does hereby grant to Mortgagee, its successors and assigns a security interest in all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI and VII below all of same being collectively referred to herein as the "Mortgaged Premises":

#### GRANTING CLAUSE I

That certain parcel of real estate lying and being in the County of Allen and State of Indiana, more particularly described in Exhibit "A" attached hereto and made a part hereof.

#### GRANTING CLAUSE II

All buildings and improvements of every kind and description heretofore or hereafter erected or placed on the property described in Granting Clause I and all materials intended for construction, reconstruction, alteration and repair of the buildings and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the said real estate, all fixtures, machinery, apparatus, equipment, fittings and articles of personal property of every kind and nature whatsoever now or hereafter attached to or contained in or used in connection with said real estate and the buildings and improvements now or hereafter located thereon and the operation, maintenance and

protection thereof, including but not limited to, all machinery, motors, fittings, radiators, awnings, shades, screens, all gas, coal, steam, electric, oil and other heating, cooking, power and lighting apparatus and fixtures, all fire prevention and extinguishing equipment and apparatus, all cooling and ventilating apparatus and systems, all plumbing, incinerating, sprinkler equipment and fixtures, all elevators and escalators, all communication and electronic monitoring equipment, all window and structural cleaning rigs and all other machinery and other equipment of every nature and fixtures and appurtenances thereto and all items of furniture, appliances, including, without limitation, ranges, refrigerators, dishwashers, draperies, carpets, other furnishings, equipment and personal property used or useful in the operation, maintenance and protection of the said real estate and the buildings and improvements now or hereafter located thereon and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said buildings or improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage; and as to the balance of the property aforesaid, this Mortgage is hereby deemed to be as well a security agreement under the provisions of the Uniform Commercial Code for the purpose of creating hereby a security interest in said property, which is hereby granted by Mortgagor as debtor to Mortgagee as secured party, securing the indebtedness hereby secured. The addresses of Mortgagor (debtor) and Mortgagee (secured party) appear at the beginning hereof.

### GRANTING CLAUSE III

All right, title and interest of Mortgagor now owned or hereafter acquired in and to all and singular the estates, tenements, hereditaments, privileges, easements, licenses, franchises, appurtenances and royalties, mineral, oil and water rights belonging or in any wise appertaining to the property described in the preceding Granting Clause I and the buildings and improvements now or hereafter located thereon and the reversions, rents, issues, revenues and profits thereof, including all interest of Mortgagor in all rents, issues and profits of the aforementioned property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advance rent or for security) under any and all leases and renewals thereof or under any contracts or options for the sale of all or any part of said property (including during any period allowed by law for the redemption of said property after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the indebtedness hereby secured and to demand, sue for and recover the same when due or payable; provided that the assignments made hereby shall not impair or diminish the obligations of Mortgagor under the provisions of such leases or other agreements nor shall such

obligations be imposed upon Mortgagee. By acceptance of this Mortgage, Mortgagee agrees that until an Event of Default (as hereinafter defined) shall occur giving Mortgagee the right to foreclose this Mortgage, Mortgagor may collect, receive (but not more than 30 days in advance) and enjoy such rents.

#### GRANTING CLAUSE IV

All judgments, awards of damages, settlements and other compensation hereafter made resulting from condemnation proceedings or the taking of the property described in Granting Clause I or any part thereof or any building or other improvements now or at any time hereafter located thereon or any easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to said property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including severance and consequential damage, and any award for change of grade of streets (collectively "Condemnation Awards").

#### GRANTING CLAUSE V

All property and rights, if any, which are by the express provisions of this instrument required to be subjected to the lien hereof and any additional property and rights that may from time to time hereafter by installation or writing of any kind, be subjected to the lien hereof.

#### GRANTING CLAUSE VI

All rights in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and any after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the property described in Granting Clause I or any part thereof.

#### GRANTING CLAUSE VII

All rights received to or granted to the developer and declarant under the provisions of the Declaration of Condominium Ownership and By-Laws (as such term is defined in Paragraph 20 hereof), if any, with respect to the Mortgaged Premises or otherwise granted to the developer pursuant to the provisions of the Condominium Act.



TO HAVE AND TO HOLD the Mortgaged Premises and the properties, rights and privileges hereby granted, bargained, sold, conveyed, mortgaged, pledged and assigned, and in which a security interest is granted, unto Mortgagee, its successors and assigns, forever; provided, however, that this instrument is upon the express condition that if the principal of and interest on the Note shall be paid in full and all other indebtedness hereby secured shall be fully paid and performed, then this instrument and the estate and rights hereby granted shall cease, determine and be void and this instrument shall be released by Mortgagee upon the written request and at the expense of Mortgagor, otherwise the same shall remain in full force and effect.

Mortgagor hereby covenants and agrees with Mortgagee as follows:

1. Payment of the Indebtedness. The indebtedness hereby secured will be promptly paid as and when the same becomes due.

2. Representation of Title and Further Assurances; Multiple Parcels. Mortgagor will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this instrument and, without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the Granting Clauses hereof or intended so to be. At the time of delivery of these presents, the Mortgagor is well seized of an indefeasible estate in fee simple in the portion of the Mortgaged Premises which constitutes real property subject only to the matters set forth on Exhibit "C" attached hereto and forming a part hereof (the "Permitted Exceptions"), and Mortgagor has good right, full power and lawful authority to convey, mortgage and create a security interest in the same, in the manner and form aforesaid; except for the Permitted Exceptions, the same is free and clear of all liens, charges, easements, covenants, conditions, restrictions and encumbrances whatsoever, including the personal property and fixtures, security agreements, conditional sales contracts and anything of a similar nature, and the Mortgagor shall and will forever defend the title to the Mortgaged Premises against the claims of all persons whomsoever. Each and every representation, warranty and covenant contained in this Mortgage with respect to the property described in GRANTING CLAUSE I shall be deemed to apply to the parcel of real estate legally described on Exhibit "A" attached hereto.

3. Payment of Taxes. Mortgagor shall pay before any penalty attaches all general taxes and all special taxes, special assessments, water, drainage and sewer charges and all other charges, of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed, imposed or charged on or against the Mortgaged Premises or any part thereof and which, if unpaid, might by law become a lien or charge upon the Mortgaged Premises or any part thereof, and shall exhibit to Mortgagee official receipts evidencing such payments, except that, unless and until foreclosure, distraint, sale or other similar proceedings shall

have been commenced, no such charge or claim need be paid if being contested (except to the extent any full or partial payment shall be required by law), after notice to Mortgagee, by appropriate proceedings which shall operate to prevent the collection thereof or the sale or forfeiture of the Mortgaged Premises or any part thereof to satisfy the same, and shall be conducted in good faith and with due diligence, and if Mortgagor shall have furnished such security, if any, as may be required in the proceedings or required by Mortgagee's title insurer to insure over the lien of such charge or claim.

4. Payment of Taxes on Note, Mortgage or Interest of Mortgagee. Mortgagor agrees that if any tax, assessment or imposition upon this Mortgage or the indebtedness hereby secured or the Note or the interest of Mortgagee in the Mortgaged Premises or upon Mortgagee by reason of any of the foregoing (including, without limitation, corporate privilege, franchise and excise taxes, but excepting therefrom any income tax on interest payments on the principal portion of the indebtedness hereby secured imposed by the United States or any State) is levied, assessed or charged, then, unless all such taxes are paid by Mortgagor to, for or on behalf of Mortgagee as they become due and payable (which Mortgagor agrees to do upon demand of Mortgagee, to the extent permitted by law), or Mortgagee is reimbursed for any such sum advanced by Mortgagee, all sums hereby secured shall become immediately due and payable, at the option of Mortgagee upon thirty (30) days' notice to Mortgagor, notwithstanding anything contained herein or in any law heretofore or hereafter enacted, including any provision thereof forbidding Mortgagor from making any such payment. Mortgagor agrees to provide to Mortgagee, upon request, official receipts showing payment of all taxes and charges which Mortgagor is required to pay hereunder.

5. Tax and Insurance Deposits. Upon the written request of Mortgagee, Mortgagor covenants and agrees to deposit with Mortgagee on the first day of each month until the indebtedness secured by this Mortgage is fully paid, a sum equal to (i) one-twelfth (1/12th) of the annual taxes and assessments (general and special) on the Mortgaged Premises and (ii) one-twelfth (1/12th) of the annual insurance premiums payable for the insurance required to be maintained by Mortgagor in accordance with Paragraph 8 hereof. If prior deposits are insufficient, Mortgagor shall deposit with Mortgagee an amount of money which, together with the aggregate of the monthly deposits made or to be made pursuant to (i) above as of one month prior to the date on which the total annual taxes and assessments for the current calendar year become due, shall be sufficient to pay in full the total annual taxes and assessments estimated by Mortgagee to become due and payable with respect to the Mortgaged Premises for the current calendar year, and an amount of money which, together with the aggregate deposits made or to be made pursuant to (ii) above as of one month prior to the date on which the next annual insurance premium becomes due shall be sufficient to pay in full the total annual insurance premium estimated by Mortgagee to next become due and payable with respect to the Mortgaged Premises. Such deposits are to be held without



any allowance of interest and are to be used for the payment of taxes and assessments (general and special) and insurance premiums, respectively, on the Mortgaged Premises next due and payable when they become due. Mortgagee may, at its option, itself pay such taxes, assessments and insurance premiums when the same become due and payable (upon submission of appropriate bills therefor from Mortgagor) or shall release sufficient funds to Mortgagor for payment of such taxes, assessments and insurance premiums. If the funds so deposited are insufficient to pay any such taxes, assessments (general or special) and insurance premiums for any year when the same shall become due and payable, Mortgagor shall within ten (10) days after receipt of demand therefor, deposit additional funds as may be necessary to pay such taxes, assessments (general and special) and insurance premiums in full. If the funds so deposited exceed the amount required to pay such taxes, assessments (general and special) and insurance premiums for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of Mortgagee. Notwithstanding the foregoing, so long as the Mortgagor is making deposits of the type set forth above pursuant to the Bank Mortgage, the Mortgagor shall not be required to make any such deposits under this Section 5.

6. Mortgagee's Interest In and Use of Deposits. Upon the occurrence of an Event of Default under this Mortgage, the Note or any other document securing the Note, the Mortgagee may at its option, without being required so to do, apply any monies at the time on deposit pursuant to Paragraph 5 hereof to the performance of any of Mortgagor's obligations hereunder or under the Note, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be irrevocably applied by Mortgagee for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that Mortgagee shall not be liable for any failure to apply to the payment of taxes and assessments any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested Mortgagee in writing to make application of such funds to the payment of which they were deposited, accompanied by the bills for such taxes and assessments. Mortgagee shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party.

7. Recordation and Payment of Taxes and Expenses Incident Thereto. Mortgagor will cause this Mortgage, all mortgages supplemental hereto and any financing statement or other notices of a security interest required by Mortgagee at all times to be kept, recorded and filed at its own expense in such manner and in such places as may be required by law for the recording and filing or for the rerecording and refileing of a mortgage, security interest, assignment or other lien or charge upon the Mortgaged Premises, or any part thereof, in order fully to preserve and protect the rights of Mortgagee hereunder, and, without limiting the foregoing, Mortgagor will pay or reimburse Mortgagee for the payment of any



and all taxes, fees or other charges incurred in connection with any such recordation or re-recordation, including any documentary stamp tax or tax imposed upon the privilege of having this instrument or any instrument issued pursuant hereto recorded.

8. Insurance.

(a) Mortgagor will, at its expense, maintain or cause to be maintained the following insurance with good and responsible insurance companies reasonably satisfactory to Mortgagee:

(i) All risk broad form insurance with standard non-contributory mortgage clauses providing that any loss is to be adjusted with, and any recovery payable to the Bank and the Mortgagee as their interests may appear. All such policies shall be in such amounts, containing such coverages and insure against such risks as shall be reasonably satisfactory to the Mortgagee. Without limiting the generality of the foregoing, the improvements shall be insured for one hundred percent (100%) of their replacement value at all times against loss or damage by fire, lightning, windstorm, explosion, theft and such other risks as are usually intended under extended coverage;

(ii) Commercial general liability insurance, in form and amount satisfactory to Mortgagee, insuring Mortgagor, Mortgagee and such other persons as Mortgagee may designate, as their interests may appear, against any loss or damage for personal injury, death and property damage occasioned by an accident or casualty occurring in, upon or about the Mortgaged Premises or the sidewalks, alleys or other property adjacent thereto;

(iii) In the event that Mortgagor contracts with or employs any person or persons upon the Mortgaged Premises, worker's compensation insurance, insuring Mortgagor and such other persons as Mortgagee may designate, as their interests may appear, against loss or damages resulting from any accident or casualty within the purview of the Indiana Worker's Compensation Law;

(iv) Rent loss insurance in an amount of not less than one (1) year's rental on the Mortgaged Premises; and

(v) Such other insurance against other insurance hazards that Mortgagee may reasonably require or which are commonly insured against in the case of property similarly situated.

(b) Policy Provisions. All insurance maintained by Mortgagor shall be maintained with good and responsible insurance companies, shall provide that no cancellation thereof shall be effective until at least 30 days after receipt by the Mortgagee of written notice thereof, shall provide that losses are payable notwithstanding any acts or omissions of Mortgagor, shall contain no deductible

provisions in excess of \$5,000.00 and shall be satisfactory to Mortgagee in all other respects.

(c) Renewal Policies. Mortgagor will deliver to the Mortgagee the original of any policy or a certificate therefor required under the provisions of this Paragraph 8(c) (or, if coverage is provided under a master policy, a photocopy of such policy and an signed certificate of insurance) and will cause renewal certificates to be delivered thereto at least 15 days prior to the expiration of any such policies and renewal policies as soon as available.

(d) Additional Policies. Mortgagor shall not take out or maintain separate insurance concurrent in kind or form or contributing in the event of loss with any insurance required hereinabove.

In the event of foreclosure, Mortgagor authorizes and empowers Mortgagee to effect insurance upon the Mortgaged Premises in the amounts aforesaid, for a period covering the time of redemption from foreclosure sale provided by law, and if necessary therefor, to cancel any or all existing insurance policies.

9. Damage to and Destruction of the Improvements.

(a) Notice. In the case of any material damage to or destruction of any improvements which are or will be constructed on the Mortgaged Premises or any part thereof, Mortgagor shall promptly give notice thereof to Mortgagee generally describing the nature and extent of such damage or destruction. Material damage shall mean damages in excess of \$5,000.00.

(b) Restoration. Upon the occurrence of any damage to or destruction of any improvements on the Mortgaged Premises, provided Mortgagee and the Bank permit the proceeds of insurance to be used for repairs, Mortgagor shall cause the same to be restored, replaced or rebuilt as nearly as possible to their value, condition and character immediately prior to such damage or destruction. Such restoration, replacement or rebuilding shall be effected promptly and Mortgagor shall notify the Mortgagee if it appears that such restoration, replacement or rebuilding may unduly delay completion of such improvements. Any amounts required for repairs in excess of insurance proceeds shall be paid by Mortgagor.

(c) Application of Insurance Proceeds. Net insurance proceeds received by the Mortgagee under the provisions of this Mortgage or any instrument supplemental hereto or thereto or any policy or policies of insurance covering any improvements on the Mortgaged Premises or any part thereof, or if received by or on behalf of the Mortgagor shall be applied, if their application is not mandated by the Bank pursuant to the Bank Mortgage, by the Mortgagee at its option as and for a prepayment on the Note (whether or not the same is then due or otherwise adequately secured) or shall be disbursed for restoration of such improvements (in which event the Mortgagee shall not be obligated to supervise



restoration work nor shall the amount so released or used be deemed a payment of the indebtedness evidenced by the Note). Notwithstanding the foregoing, Mortgagor shall be entitled to receive insurance proceeds for use in reconstruction if the amount required to reconstruct is \$200,000.00 or less. If Mortgagee elects to permit the use of insurance proceeds to restore such improvements it may do all necessary acts to accomplish that purpose including using funds deposited by Mortgagor with it for any purpose and advancing additional funds, all such additional funds to constitute part of the indebtedness secured by the Mortgage. If Mortgagee elects to make the insurance proceeds available to Mortgagor for the purpose of effecting such a restoration, or, following an Event of Default, elects to restore such improvements, any excess of insurance proceeds above the amount necessary to complete such restoration shall be applied as and for a prepayment on the Note. Any insurance proceeds to be released pursuant to the foregoing provisions may at the option of Mortgagee be disbursed from time to time as restoration progresses to pay for restoration work completed and in place and such disbursements shall be disbursed in such manner as Mortgagee may reasonably determine. Mortgagee may impose such further conditions upon the release of insurance proceeds (including the receipt of title insurance) as are customarily imposed by prudent construction lenders to insure the completion of the restoration work free and clear of all liens or claims for lien. All necessary and reasonable title insurance charges and other costs and expenses paid to or for the account of Mortgagee in connection with the release of such insurance proceeds shall constitute so much additional indebtedness secured by this Mortgage to be payable upon demand and if not paid upon demand shall bear interest at the Default Interest Rate (as defined in Paragraph 40 hereof). Mortgagee may deduct any such reasonable costs and expenses from insurance proceeds at any time held by Mortgagee. No interest shall be payable to Mortgagor upon insurance proceeds held by Mortgagee.

(d) Adjustment of Loss. Subject to the Bank's rights under the Bank Mortgage, Mortgagee is hereby authorized and empowered, at its option, to adjust or compromise any loss of more than \$5,000.00 under any insurance policies covering or relating to the Mortgaged Premises and to collect and receive the proceeds from any such policy or policies; provided, however, that if Mortgagee shall give notice to Mortgagor of Mortgagee's election not to adjust or compromise any such loss, then Mortgagor may adjust or compromise such loss, provided that Mortgagee shall still collect and receive the proceeds from any such policy or policies. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact for the purposes set forth in the preceding sentence. Each insurance company is hereby authorized and directed to make payment (i) of 100% of all such losses of more than said amount directly to Mortgagee alone and (ii) of 100% of all such losses of said amount or less directly to Mortgagor alone, and in no case to Mortgagor and Mortgagee jointly. After deducting from such insurance proceeds any expenses incurred by Mortgagee in the collection and settlement thereof, including without limitation attorneys' and



adjusters' fees and charges, Mortgagee shall apply the net proceeds as provided in Paragraph 9(c). Mortgagee shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

10. Eminent Domain.

(a) Notice. Mortgagor covenants and agrees that Mortgagor will give Mortgagee prompt notice of the actual or threatened commencement of any proceedings under condemnation or eminent domain affecting all or any part of the Mortgaged Premises including any easement therein or appurtenance thereof or severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings.

(b) Assignment of Claim, Power of Attorney to Collect, Etc. Subject to the superior rights of the Bank pursuant to the Bank Mortgage, any and all awards heretofore or hereafter made or to be made to the present and all subsequent owners of the Mortgaged Premises by any governmental body for taking or affecting the whole or any part of said Mortgaged Premises, the improvements on the Mortgaged Premises or any easement therein or appurtenance thereto (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the award for payment thereof) are hereby assigned by Mortgagor to Mortgagee to the extent of the existing principal balance, interest thereon and other outstanding charges owed by Mortgagor to Mortgagee and Mortgagor hereby irrevocably constitutes and appoints Mortgagee its true and lawful attorney-in-fact with full power of substitution for it and in its name, place and stead to collect and receive the proceeds of any such award granted by virtue of any such taking and to give proper receipts and acquittances therefor. Mortgagee shall not settle any condemnation award with the condemning party without the consent of the Mortgagor. Mortgagor shall have the right to participate in any proceedings which determine the award to be granted.

(c) Effect of Condemnation and Application of Awards. In the event that any proceedings are commenced by any governmental body or other person to take or otherwise affect the Mortgaged Premises, the improvements thereon or any easement therein or appurtenance thereto, Mortgagee may, at its option, apply the proceeds of any award made in such proceedings as and for a prepayment on the indebtedness evidenced by the Note, notwithstanding the fact that said indebtedness may not then be due and payable or is otherwise adequately secured.

11. Construction, Repair, Waste, Etc. Mortgagor covenants and agrees (i) that no improvements on the Mortgaged Premises and constituting a part thereof shall be materially altered, removed or demolished nor shall any fixtures or appliances on, in or about said improvements be severed, removed, sold or mortgaged, without the consent of Mortgagee; and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels or

articles of personal property covered hereby, the same will be replaced promptly by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from any security interest in or encumbrance thereon or reservation of title thereto; (ii) to permit, commit or suffer no waste, impairment or deterioration of the Mortgaged Premises or any part thereof, ordinary wear and tear and loss, damage or destruction by casualty (if covered by insurance) excepted; (iii) to keep and maintain said Mortgaged Premises and every part thereof in good repair and condition (ordinary wear and tear excepted); (iv) to effect such repairs as Mortgagee may reasonably require and from time to time to make all needful and proper replacements and additions so that said buildings, fixtures, machinery and appurtenances will, at all times, be in good condition, fit and proper for their respective purposes, ordinary wear and tear excepted; (v) to comply with all statutes, orders, requirements or decrees relating to said Mortgaged Premises by any Federal, State or Municipal authority; and (vi) to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions which are applicable to the Mortgaged Premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the Mortgaged Premises or any part hereof and not to initiate or acquiesce in any changes to or terminations of any of the foregoing or of zoning classifications affecting the use to which the Mortgaged Premises or any part thereof may be put without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed.

12. Liens and Encumbrances. Mortgagor will not, without the prior written consent of Mortgagee, directly or indirectly, create or suffer to be created, or to remain, and will discharge or promptly cause to be discharged any mortgage, lien, encumbrance or charge on, pledge or conditional sale or other title retention agreement with respect to the Mortgaged Premises or any part thereof, whether superior or subordinate to the lien hereof, except for this instrument and the lien of all other documents given to secure the indebtedness hereby secured and except for the Bank Mortgage; provided, however, that Mortgagor may contest the validity of any mechanic's lien, charge or encumbrance (other than the lien of this Mortgage or of any other document securing payment of the Note) upon giving Mortgagee timely notice of its intention to contest the same and either (a) maintaining with Mortgagee a deposit of cash or negotiable securities satisfactory to Mortgagee in an amount sufficient in the opinion of Mortgagee to pay and discharge or to assure compliance with the matter under contest in the event of a final determination thereof adverse to Mortgagor or (b) obtaining title insurance coverage over such lien on Mortgagee's title insurance policy. Mortgagor agrees to prosecute and contest such lien diligently and by appropriate legal proceedings which will prevent the enforcement of the matter under contest and will not impair the lien of this Mortgage or interfere with the normal conduct of business on the Mortgaged Premises. On



final disposition of such contest, any cash or securities in Mortgagee's possession not required to pay or discharge or assure compliance with the matter contested shall be returned to Mortgagor without interest.

13. Right of Mortgagee to Perform Mortgagor's Covenants, Etc. If Mortgagor shall fail to make any payment or perform any act required to be made or performed hereunder, Mortgagee, without waiving or releasing any obligation or default, may (but shall be under no obligation to), at any time thereafter, upon prior written notice to Mortgagor and failure of Mortgagor to make such payment or perform such act within any applicable cure period provided herein, make such payment or perform such act for the account and at the expense of Mortgagor, and may enter upon the Mortgaged Premises or any part thereof for such purpose and take all such action thereon as, in the opinion of Mortgagee, may be necessary or appropriate therefor. All sums so paid by Mortgagee and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) so incurred, together with interest thereon from the date of payment or incurrence at the Default Interest Rate, shall constitute so much additional indebtedness hereby secured and shall be paid by Mortgagor to Mortgagee on demand. Mortgagee in making any payment authorized under this Paragraph relating to taxes or assessments may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim thereof.

14. After-Acquired Property. Any and all property hereafter acquired which is of the kind or nature herein provided and related to the premises described in Granting Clause I hereof, or intended to be and become subject to the lien hereof, shall ipso facto, and without any further conveyance, assignment or act on the part of Mortgagor, become and be subject to the lien of this Mortgage as fully and completely as though specifically described herein; but nevertheless Mortgagor shall from time to time, if requested by Mortgagee, execute and deliver any and all such further assurances, conveyances and assignments as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Mortgage all such property.

15. Inspection by Mortgagee. Mortgagee and its agents shall have the right to inspect the Mortgaged Premises at all reasonable times, and access thereto shall be permitted for that purpose.

16. [Intentionally Omitted.]

17. Environmental Matters.

(a) Definitions: As used herein, the following terms shall have the following meanings:

(i) "Environmental Laws" means all federal, state and local statutes, laws, rules, regulations, ordinances,

requirements, or rules of common law, including but not limited to those listed or referred to in paragraph (b) below, any judicial or administrative interpretations thereof, and any judicial and administrative consent decrees, orders or judgments, whether now existing or hereinafter promulgated, relating to public health and safety and protection of the environment.

(ii) "Hazardous Material" means any above or underground storage tanks, flammables, explosives, accelerants, asbestos, radioactive materials, radon, urea formaldehyde foam insulation, lead-based paint, polychlorinated biphenyls, petroleum or petroleum based or related substances, hydrocarbons or like substances and their additives or constituents, methane, solid wastes, refuse, garbage, construction debris, rubble, hazardous materials, hazardous wastes, toxic substances or related materials, and including, without limitation, substances now or hereafter defined as "hazardous substances", "hazardous materials", "toxic substances" or "hazardous wastes" in The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601, et seq.), including amendments contained in the Superfund Amendments and Reauthorization Act of 1986 (P.L. 99-499, 42 U.S.C.), The Toxic Substance Control Act of 1976 as amended, (15 U.S.C. §2601 et seq.), The Resource Conservation and Recovery Act, as amended (42 U.S.C. §6901, et seq.), The Hazardous Materials Transportation Act, as amended (49 U.S.C. §1801, et seq.), The Clean Water Act, as amended (33 U.S.C. §1251, et seq.), The Clean Air Act, as amended (42 U.S.C. §7401 et seq.), any so-called "Superfund" or "Superlien" law or any other applicable federal, state or local law, common law, code, rule, regulation, or ordinance, presently in effect or hereafter enacted, promulgated or implemented.

(iii) "Environmental Liability" means any losses, liabilities, obligations, penalties, charges, fees, claims, litigation demands, defenses, costs, judgments, suits, proceedings, response costs, damages (including consequential damages), disbursements or expenses of any kind or nature whatsoever (including attorneys' fees at trial and appellate levels and experts' fees and disbursements and expenses incurred in investigating, defending against or prosecuting any litigation, claim or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Mortgagee or any of Mortgagee's parent or subsidiary corporations, and their affiliates, shareholders, directors, officers, employees, and agents (collectively "Affiliates") in connection with or arising from:

a. any Hazardous Material on, in, under or affecting all or any portion of the Mortgaged Premises, the groundwater, or any surrounding areas;



b. any misrepresentation, inaccuracy or breach of any warranty, covenant and agreement contained or referred to in this Paragraph;

c. any violation or claim of violation by Mortgagor of any Environmental Laws;

d. the imposition of any lien for damages caused by, or the recovery of any costs for, the cleanup, release or threatened release of Hazardous Material;

e. the costs of removal of any and all Hazardous Material from all or any portion of the Mortgaged Premises or any surrounding areas; and

f. costs incurred to comply, in connection with all or any portion of the Mortgaged Premises or any surrounding areas, with all Environmental Laws with respect to Hazardous Material.

(b) Representations and Warranties. Mortgagor hereby represents and warrants to Mortgagee that to the best of Mortgagor's knowledge upon due inquiry:

(i) Compliance. The Mortgaged Premises (including underlying groundwater and areas leased to tenants, if any), and the use and operation thereof, are currently in compliance with all applicable Environmental Laws. All required governmental permits and licenses are in effect, and Mortgagor is in compliance therewith. All Hazardous Material generated or handled on the Mortgaged Premises, if any, have been disposed of in a lawful manner.

(ii) Absence of Hazardous Material. No generation, manufacture, storage, treatment, transportation or disposal of Hazardous Material has occurred nor is occurring on or from the Mortgaged Premises. No environmental or public health or safety hazards currently exist with respect to the Mortgaged Premises or the business or operations conducted thereon. No above or underground storage tanks (including petroleum storage tanks) are present on or under the Mortgaged Premises.

(iii) Proceedings and Actions. There are no pending or threatened: (a) actions or proceedings by any governmental agency or any other entity regarding public health risks or the environmental condition of the Mortgaged Premises, or the disposal or presence of Hazardous Material, or regarding any Environmental Laws; or (b) liens or governmental actions, notices of violations, notices of noncompliance or other proceedings of any kind that could impair the value of the Mortgaged Premises, or the priority of this Mortgage lien or of any of the other documents or instruments now or hereafter given as security for the indebtedness hereby secured.

(c) Mortgagor's Covenants. Mortgagor hereby covenants and agrees with Mortgagee as follows:

(i) Compliance. The Mortgaged Premises and the use and operation thereof shall comply with all Environmental Laws. All required governmental permits and licenses shall remain in effect and Mortgagor shall comply therewith. All Hazardous Material present, handled or generated on the Mortgaged Premises will be disposed of in a lawful manner. Mortgagor will satisfy all requirements of applicable Environmental Laws for the maintenance and removal of all underground storage tanks on the Mortgaged Premises, if any. Without limiting the foregoing, all Hazardous Material shall be handled in compliance with all applicable Environmental Laws.

(ii) Absence of Hazardous Material. No Hazardous Material shall be introduced to or handled on the Mortgaged Premises; provided, however, that Hazardous Materials customarily used in the construction of buildings may be used at the Mortgaged Premises so long as the introduction, use and disposition thereof comply with all applicable Environmental Laws and the quantities thereof are normal for similar construction.

(iii) Proceedings and Actions. Mortgagor shall immediately notify Mortgagee and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports or notices relating to the condition of the Mortgaged Premises or compliance with Environmental Laws. Mortgagor shall promptly cure and have dismissed any such actions and proceedings to the satisfaction of Mortgagee. Mortgagor shall keep the Mortgaged Premises free of any lien imposed pursuant to any Environmental Laws.

(iv) Environmental Audit. Mortgagor shall provide such information and certifications which Mortgagee may reasonably request from time to time to insure Mortgagor's compliance with this Paragraph. To investigate Mortgagee's compliance with Environmental Laws and with this Paragraph, Mortgagee shall have the right, but no obligation, at any time when Mortgagee, in its reasonable judgment, deems appropriate, to enter upon the Mortgaged Premises, take samples, review Mortgagor's books and records, interview Mortgagee's employees and officers, and conduct similar activities. Mortgagor shall cooperate in the conduct of such an audit.

(d) Mortgagee's Right to Rely. Mortgagee is entitled to rely upon Mortgagor's representations and warranties contained in this Paragraph despite any independent investigations by Mortgagee or its consultants; provided, however, that in the event that Mortgagee obtains actual knowledge that a representation or warranty previously made by Mortgagor is not correct, then Mortgagee may not rely upon such incorrect representation or warranty of such Mortgagor in pursuing Mortgagee's subsequent course of action as to the matter represented, provided, however,



that Mortgagee shall retain all of its rights and remedies against Mortgagor as a result of the breach of the representation or warranty found to be incorrect. The Mortgagor shall take reasonable actions to determine for itself, and to remain aware of, the environmental condition of the Mortgaged Premises and shall have no right to rely upon any environmental investigations or findings made by Mortgagee or its consultants.

(e) Indemnification. Mortgagor agrees to indemnify, defend (at trial and appellate levels and with counsel reasonably acceptable to Mortgagee and at Mortgagor's sole cost) and hold Mortgagee and its Affiliates free and harmless from and against Mortgagee's Environmental Liability. The foregoing indemnity shall survive satisfaction of the loan evidenced by the Note and any transfer of the Mortgaged Premises to Mortgagee by voluntary transfer, foreclosure or by a deed in lieu of foreclosure. This indemnification shall not apply to any liability incurred by Mortgagee as a direct result of affirmative actions of Mortgagee as owner and operator of the Mortgaged Premises after Mortgagee has acquired title to the Mortgaged Premises and which actions are the sole and direct cause of damage resulting from the introduction and initial release of a Hazardous Material upon the Mortgaged Premises by Mortgagee; PROVIDED, HOWEVER, this indemnity shall otherwise remain in full force and effect, including, without limitation, with respect to Hazardous Material which is discovered or released at the Mortgaged Premises after Mortgagee acquires title to the Mortgaged Premises but which was not actually introduced at Mortgaged Premises by Mortgagee, with respect to the continuing migration or release of Hazardous Material previously introduced at or near the Mortgaged Premises and with respect to all substances which may be Hazardous Material and which are situated at the Mortgaged Premises prior to Mortgagee taking title but are removed by Mortgagee subsequent to such date.

(f) Waiver. Mortgagor, its successors and assigns, hereby waives, releases and agrees not to make any claim or bring any cost recovery action against Mortgagee under CERCLA or any state equivalent, or any similar law now existing or hereafter enacted. It is expressly understood and agreed that to the extent that Mortgagee is strictly liable under any Environmental Laws, Mortgagor's obligation to Mortgagee under this indemnity shall likewise be without regard to fault on the part of Mortgagor with respect to the violation or condition which results in liability to Mortgagee.

(g) Interest. Any amount claimed hereunder by Mortgagee, not paid by Mortgagor within 30 days after written demand from Mortgagee with an explanation of the amounts claimed, shall bear interest at a rate per annum equal to the Default Interest Rate under the Note.

18. Transfer of the Mortgaged Premises. For the purposes of (i) protecting Mortgagee's security; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; and (iii) keeping the Mortgaged Premises free of subordinate financing liens,

Mortgagor shall not permit or suffer to occur any sale, assignment, conveyance, mortgage (other than the Bank Mortgage), lease (other than apartment leases entered into in the ordinary course of business), pledge, encumbrance or other transfer of, or the granting of any option in, or any contract for any of the foregoing (on an installment basis or otherwise) pertaining to:

(i) the Mortgaged Premises, any part thereof, or any interest therein; or

(ii) any interest in Mortgagor;

whether involuntary or by operation of law or otherwise, without the prior written consent of Mortgagee having been obtained to such sale, assignment, conveyance, mortgage, lease, option, pledge, encumbrance or other transfer. Mortgagor agrees that in the event the ownership of the Mortgaged Premises, any interest therein or any part thereof becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal in any way with such successor or successors in interest with reference to this Mortgage, the Note, and any other document evidencing the indebtedness secured hereby, without in any way vitiating or discharging Mortgagor's liability hereunder or under any other document evidencing the indebtedness secured hereby. No sale of the Mortgaged Premises, forbearance granted to any person with respect to this Mortgage, or extension to any person of the time for payment of the Note given by Mortgagee shall operate to release, discharge, modify, change or affect the liability of Mortgagor, either in whole or in part, except to the extent specifically agreed in writing by Mortgagee. Without limitation of the foregoing, in any event in which the written consent of Mortgagee is required in this Paragraph 18, Mortgagee may condition its consent upon any combination of (i) the payment of compensation to be determined by Mortgagee, (ii) the increase of the interest rate payable under the Note, (iii) the shortening of maturity of the Note, and (iv) other modifications of the terms of the Note or the other instruments evidencing the indebtedness secured hereby.

Without limitation of the foregoing, (i) in any event in which Mortgagee's consent is requested in accordance with the terms of this Paragraph 18, Mortgagor shall pay all expenses incurred by Mortgagee, including reasonable attorneys' fees, in connection with the processing of such request, and (ii) the consent of Mortgagee to any transfer of the Mortgaged Premises shall not operate to release, discharge, modify, change or affect the liability of Mortgagor, either in whole or in part.

19. Books and Records. Mortgagee, its officers, employees and representatives shall have the right at any reasonable time to examine, copy and make extracts of the books and records of Mortgagor. Such books and records shall be made available to Mortgagee, its officers, employees, agents and representatives at all reasonable times at Mortgagor's corporate offices or at such other location as Mortgagee shall approve. Mortgagor agrees to furnish to Mortgagee not more than thirty (30) days following



written request from Mortgagee such other reports, financial statements and other financial information concerning Mortgagor as Mortgagee may from time to time request.

20. Subordination. The indebtedness secured hereby constitutes "Subordinated Debt", as defined in that certain Subordination Agreement ("Subordination Agreement") of even date herewith by and among Mortgagor, Mortgagee and Bank. Notwithstanding anything contained in any Loan Document to the contrary, except as Bank may hereafter otherwise expressly agree in writing, Mortgagee shall have no right to take any action with respect to enforcement of any remedies of Mortgagee under the Purchase Contract, the Note or this Mortgage unless and until all of the "Senior Debt" as defined in the Subordination Agreement has been paid in full. The Mortgagee agrees to enter into any subordination agreement or intercreditor agreement that the Bank or any successor thereto or refinancing creditor whose debt will be a Permitted Exception may reasonably request.

21. [Intentionally Omitted.]

22. Reporting. Mortgagor shall furnish to Mortgagee, within fifteen (15) days of the end of each calendar quarter, the rent roll and operating statements with respect to the Mortgaged Premises for each such calendar quarter, certified to be true and correct by the president of the general partner of Mortgagor.

23. Events of Default. Any one or more of the following shall constitute an "Event of Default" hereunder:

(a) Default in making payment when due (whether by lapse of time, acceleration, or otherwise) of the principal of or interest on the Note or any other indebtedness hereby secured and failure to cure such default within one day of written notice thereof;

(b) Any violation of Paragraph 8 or any violation of Paragraph 18 hereof;

(c) The Mortgaged Premises is abandoned by the Mortgagor;

(d) Default in the observance or performance of any other covenant, condition, agreement or provisions hereof or of the Note or any additional Loan Document which is not remedied within thirty (30) days after written notice thereof to Mortgagor by Mortgagee; provided, however, that if such default by its nature cannot be cured within said thirty (30) days and Mortgagor so notifies Mortgagee and promptly initiates and diligently proceeds to cure such default, the period for curing such default shall be extended on a per diem basis for up to an additional ninety (90) days;

(e) Default under the Bank Mortgage that is not cured within any applicable grace period;

(f) Any representation or warranty made by the Mortgagor in the Note or any Loan Documents or in any statement or certificate furnished pursuant hereto or thereto proves untrue in any material respect as of the date of the issuance or making thereof;

(g) Mortgagor or any general partner of Mortgagor (a "Constituent Entity") becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee, custodian or receiver for itself or for the major part of its property;

(h) Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other proceedings for relief under any bankruptcy laws or laws for the relief of debtors are instituted voluntarily by or involuntarily against the Mortgagor or any Constituent Entity and, if instituted involuntarily against Mortgagor or any Constituent Entity, are not dismissed within sixty (60) days after such institution; or

(i) Any judgment or judgments, writ or writs or warrant or warrants of attachment or any similar process or processes in an aggregate amount in excess of \$100,000.00 shall be entered or filed against Mortgagor or any Constituent Entity, or against any of their respective property or assets and remains unsatisfied, unvacated, unbonded or unstayed for a period of thirty (30) days.

24. Remedies. When any Event of Default has happened and is continuing (regardless of the pendency of any proceeding which has or might have the effect of preventing Mortgagor from complying with the terms of this instrument) and in addition to such other rights as may be available under applicable law, or under any other Loan Document, but subject at all times to any mandatory legal requirements:

(a) Acceleration. Mortgagee may, by written notice to Mortgagor, declare the Note and all unpaid indebtedness hereby secured, including interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind.

(b) Uniform Commercial Code. Mortgagee shall, with respect to any part of the Mortgaged Premises constituting property of the type in respect of which realization on a lien or security interest granted therein is governed by the Uniform Commercial Code, have all the rights, options and remedies of a secured party under the Uniform Commercial Code of Indiana, including without limitation, the right to the



possession of any such property or any part thereof, and the right to enter with legal process any premises where any such property may be found. Any requirement of said Code for reasonable notification shall be met by mailing written notice to Mortgagor at its address above set forth at least ten (10) days prior to the sale or other event for which such notice is required. The expenses of retaking, selling and otherwise disposing of said property, including reasonable attorneys' fees and legal expenses incurred in connection therewith, shall constitute so much additional indebtedness hereby secured and shall be payable upon demand with interest at the Default Interest Rate.

(c) Foreclosure. Mortgagee may proceed to protect and enforce the rights of Mortgagee hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness hereby secured in the decree of sale, all expenditures and expenses authorized by the Indiana Mortgage Foreclosure Law, et seq., as from time to time amended (the "Act") and all other reasonable expenditures and out-of-pocket expenses which may be paid or incurred by or on behalf of Mortgagee for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Premises. All expenditures and expenses of the nature mentioned in this Paragraph, and such other expenses and fees as may be incurred in the protection of the Mortgaged Premises and rents and income therefrom and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Mortgaged Premises, including bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional indebtedness hereby secured and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Interest Rate until paid.

(d) Appointment of Receiver. Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through it, and

without regard to the solvency or insolvency of Mortgagor or the then value of the Mortgaged Premises, be entitled to have a receiver appointed pursuant to the Act of all or any part of the Mortgaged Premises and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(e) Taking Possession, Collecting Rents, Etc. Upon demand by Mortgagee after the occurrence of an Event of Default, Mortgagor shall surrender to Mortgagee and Mortgagee may enter and take possession of the Mortgaged Premises or any part thereof personally, by its agents or attorneys or be placed in possession pursuant to court order as mortgagee in possession or receiver as provided in the Act, and Mortgagee, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver as provided in the Act may enter upon and take and maintain possession of all or any part of the Mortgaged Premises, together with all documents, books, records, papers, and accounts of Mortgagor relating thereto, and may exclude Mortgagor and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor, or in its own name as Mortgagee and under the powers herein granted:

(i) hold, operate, manage and control all or any part of the Mortgaged Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Mortgaged Premises, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;

(ii) cancel or terminate any lease or sublease of all or any part of the Mortgaged Premises for any cause or on any ground that would entitle Mortgagor to cancel the same;



(iii) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Premises made subsequent to this Mortgage without Mortgagee's prior written consent;

(iv) extend or modify any then existing leases and make new leases of all or any part of the Mortgaged Premises, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the loan evidenced by the Note and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Mortgaged Premises are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness hereby secured, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

(v) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Premises as may seem judicious to Mortgagee, to insure and reinsure the Mortgaged Premises and all risks incidental to Mortgagee's possession, operation and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom; and

(vi) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Premises, to the payment of taxes, premiums and other charges applicable to the Mortgaged Premises, or in reduction of the indebtedness hereby secured in such order and manner as Mortgagee shall select.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Premises. The right to enter and take possession of the Mortgaged Premises and use any personal property therein, to manage, operate, conserve and improve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any reasonable receiver's fees, counsel fees, costs and agent's compensation) incurred

pursuant to the powers herein contained shall be secured hereby, which expenses Mortgagor promises to pay upon demand together with interest at the rate applicable to the Note at the time such expenses are incurred. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any rents actually received by Mortgagee. Without taking possession of the Mortgaged Premises, Mortgagee may, in the event the Mortgaged Premises become vacant or are abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Premises (including hiring watchmen therefor) and all reasonable costs incurred in so doing shall constitute so much additional indebtedness hereby secured payable upon demand with interest thereon at the Default Interest Rate.

25. Compliance with Indiana Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all reasonable expenses incurred by Mortgagee to the extent reimbursable under of the Act (or any successor provisions), whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Paragraphs 27(b), 27(c) or 30 of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

26. Waiver of Right to Redeem - Waiver of Appraisement, Valuation, Etc. Mortgagor shall not and will not apply for or avail itself of any reinstatement, appraisement, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Mortgaged



Premises may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Mortgagee may determine. Mortgagee shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Mortgagee so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Mortgagee with the amount payable to Mortgagee out of the net proceeds of such sale. In the event of any such sale, the Note and the other indebtedness hereby secured, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Mortgagor acknowledges that the Mortgaged Premises does not constitute agricultural real estate, as defined in the Act (or any successor provision), or residential real estate, as defined in the Act (or any successor provision). To the fullest extent permitted by law, Mortgagor, pursuant to the Act, hereby voluntarily and knowingly waives any and all rights of redemption on behalf of Mortgagor, and each and every person acquiring any interest in, or title to the Mortgaged Premises described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law.

27. Costs and Expenses of Foreclosure. In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, Torrens certificates and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Premises, and all of which expenditures shall become so much additional indebtedness secured hereby which Mortgagor agrees to pay and all of such shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Interest Rate.

28. Insurance After Foreclosure. Wherever provision is made in the Mortgage for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of the Mortgagee shall continue in the Mortgagee as judgment creditor or mortgagee until confirmation of sale. Upon confirmation of sale, Mortgagee shall be empowered to assign all policies of insurance to the purchaser at the sale.

29. Protective Advances. All reasonable advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to or any successor provisions:

(a) all advances by Mortgagee in accordance with the terms of this Mortgage to: (i) preserve or maintain, repair, restore or rebuild the improvements upon the Mortgaged Premises; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in the Act;

(b) payments by Mortgagee of: (i) installments of principal, interest or other obligations when due in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Premises or any part thereof; (iii) any other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in the Act;

(c) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(d) reasonable attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Mortgage as referred to in the Act; (ii) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of this Mortgage or arising from the interest of the Mortgagee hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;

(e) Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in the Act;



(f) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Mortgage;

(g) expenses deductible from proceeds of sale as referred to in the Act;

(h) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (a) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation of maintaining existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Premises imposed by the Act; (b) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (c) payments required or deemed by Mortgagee to be for the benefit of the Mortgaged Premises under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Premises; (d) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Premises is a member in any way affecting the Mortgaged Premises; and (e) pursuant to any lease or other agreement for occupancy of the Mortgaged Premises.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Interest Rate.

Pursuant to the Act, this Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded.

All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

(i) the amount of indebtedness secured by this Mortgage at any time;

(ii) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(iii) amounts deductible from sale proceeds pursuant to the Act;

(iv) the application of income in the hands of any receiver or mortgagee in possession; and

(v) the computation of any deficiency judgment pursuant to the Act.

30. Application of Proceeds. The proceeds of any foreclosure sale of the Mortgaged Premises shall be distributed in the following order of priority: First, the reasonable expenses of sale; Second, all costs and expenses incident to the foreclosure or other proceedings permitted under the Act or hereunder; Third, to all other items which under the terms hereof constitute indebtedness hereby secured in addition to that evidenced by the Note with interest thereon as herein provided; Fourth, to all interest on the Note; Fifth, to all principal on the Note with any surplus to Mortgagor unless directed otherwise by a court of competent jurisdiction.

31. Mortgagee's Remedies Cumulative - No Waiver. No remedy or right of Mortgagee shall be exclusive but shall be cumulative and in addition to every other remedy or right now or hereafter existing at law or in equity or by statute. No delay in the exercise or omission to exercise any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee. Any suit commenced to enforce this Mortgage shall be commenced, to the extent legally permissible, in a court located in Fort Wayne, Indiana.

32. Mortgagee Party to Suits. If Mortgagee shall be made a party to or shall intervene in any action or proceeding affecting the Mortgaged Premises or the title thereto or the interest of Mortgagee under this Mortgage (including probate and bankruptcy proceedings), or if Mortgagee employs an attorney to collect any or all of the indebtedness hereby secured or to enforce any of the terms hereof or realize hereupon or to protect the lien hereof, or if Mortgagee shall incur any costs or expenses in preparation for the commencement of any foreclosure proceeding or for the defense of any threatened suit or proceeding which might affect the Mortgaged Premises or the security hereof, whether or not any such foreclosure or other suit or proceeding shall be actually commenced, then in any such case, Mortgagor agrees to pay to Mortgagee, immediately and without demand, all reasonable costs, charges, expenses and attorneys' fees incurred by Mortgagee in any such case, and the same shall constitute so much additional



indebtedness hereby secured payable upon demand with interest at the Default Interest Rate.

33. Modifications Not To Affect Lien. Mortgagee, without notice to anyone, and without regard to the consideration, if any, paid therefor, or the presence of other liens on the Mortgaged Premises, may in its discretion release any part of the Mortgaged Premises or any person liable for any of the indebtedness hereby secured, may extend the time of payment of any of the indebtedness hereby secured and may grant waivers or other indulgences with respect hereto and thereto, without in any way affecting or impairing the liability of any party liable upon any of the indebtedness hereby secured or the priority of the lien of this Mortgage upon all of the Mortgaged Premises not expressly released, and may agree with Mortgagor to modifications to the terms and conditions contained herein or otherwise applicable to any of the indebtedness hereby secured (including modifications in the rates of interest applicable thereto).

34. Notices. All notices or other communications required or permitted hereunder shall be (a) in writing and shall be deemed to be given when either (i) delivered in person, (ii) three business days after deposit in a regularly maintained receptacle of the United States mail as registered or certified mail, postage prepaid, (iii) when received if sent by private courier service or by facsimile transmission, or (iv) on the day on which the party to whom such notice is addressed refuses delivery by mail or by private courier service and (b) addressed as follows:

If to Mortgagee: City of Fort Wayne - Department  
of Community Development  
1 Main Street, Room 830  
Fort Wayne, Indiana 46802

With copy to: David Boyer, Esq.  
Helmke Beam Boyer and Wagner  
300 Metro Building  
Fort Wayne, Indiana 46802

If to Mortgagor: CERC - McMillen Apartments Limited  
Partnership  
5519 South Dorchester  
Chicago, Illinois 60637

With copy to: Scott I. Canel & Associates  
10 South LaSalle Street  
Suite 3440  
Chicago, Illinois 60603  
Attn: Scott I. Canel

or to each such party at such other addresses as such party may designate in a written notice to the other parties.

35. Partial Invalidity. All rights, powers and remedies provided herein are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Mortgage shall be held to be invalid or unenforceable, the validity and enforceability of the other terms of this Mortgage shall in no way be affected thereby.

36. Successors and Assigns. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Mortgage contained by or on behalf of Mortgagor, or by or on behalf of Mortgagee, shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not.

37. Default Interest Rate. For purposes of this Mortgage, "Default Interest Rate" shall mean the "Default Interest Rate" as defined in the Note.

38. Headings. The headings in this instrument are for convenience of reference only and shall not limit or otherwise affect the meaning of any provision hereof.

39. Changes, Etc. This instrument and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

40. Venue/Waiver of Jury Trial. MORTGAGOR IRREVOCABLY AGREES THAT, SUBJECT TO MORTGAGEE'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT ARISING OUT OF, OR FROM, OR RELATED TO, THIS MORTGAGE OR THE NOTE SHALL BE LITIGATED ONLY IN COURTS HAVING A SITUS WITHIN FORT WAYNE, INDIANA. MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SUCH COUNTY. MORTGAGOR HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH. MORTGAGOR HEREBY IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH MORTGAGOR AND MORTGAGEE ARE PARTIES. MORTGAGOR HEREBY WAIVES PERSONAL SERVICE OF PROCESS IN ANY SUIT COMMENCED IN CONNECTION WITH THIS INSTRUMENT, AGREES AND CONSENTS THAT SERVICE OF PROCESS BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO THE LAST KNOWN ADDRESS OF MORTGAGOR SHALL BE SATISFACTORY SERVICE OF PROCESS IN CONNECTION WITH ANY SUIT BROUGHT IN CONNECTION WITH THIS INSTRUMENT AND AGREES THAT SUCH SERVICE OF PROCESS SHALL BE DEEMED COMPLETED TEN (10) DAYS AFTER MAILING THEREOF.



41. Governing Law. This Mortgage shall be governed by and construed under the laws of the State of Indiana.

42. Nonrecourse Nature of Payments. Neither the Mortgagor, nor any general or limited partner of the Mortgagor, nor any incorporator, director, shareholder or officer of any partner of the Mortgagor shall have any personal liability for any sum payable hereunder. The covenant of the Mortgagor to pay amounts hereunder is for the sole purpose of establishing the existence of the indebtedness set forth in the Note. However, it is a condition of the covenants set forth herein that in the event of default under the terms hereof, Mortgagee shall take no action against the Mortgagor personally nor against its general or limited partners nor any or their incorporators, directors, shareholders or officers, except such as may be necessary to subject to the satisfaction of the indebtedness set forth in the Note from the Property described in this Mortgage and any chattels appurtenant to the use thereof.

43. Entire Agreement. This Mortgages and the Exhibits hereto, which are incorporated herein by reference, represent the entire agreement between the parties with respect to the subject matter hereof.

44. Permitted Exceptions. The Bank Mortgage, the Loan secured thereby and any refinancings of such Loan, from time to time, including without limitation of the foregoing, any refinancing which (i) increases the principal amount secured by such Bank Mortgage, (ii) changes the interest rate or the term of the loan, or (iii) otherwise materially changes the terms of such lan, shall be a Permitted Exception as such term is used in the foregoing mortgage; provided, however, that in the case of any such refinanced indebtedness the annual debt service on such refinanced debt shall not exceed \$220,000.00 per year. Upon any such refinancing, the term "Bank" as used in this Mortgage shall refer to the creditor refinancing such indebtedness, and the term "Bank Mortgage" as used in this Mortgage shall refer to the mortgage securing such refinanced indebtedness, the terms of which mortgage shall be as mutually agreed by the Mortgagor and such new creditor.

IN WITNESS WHEREOF, the undersigned have caused these presents to be signed as of the day and year first above written.

CERC - MCMILLEN APARTMENTS LIMITED PARTNERSHIP  
an Illinois limited partnership

By: Community Economic Redevelopment  
Corporation, an Illinois not for  
profit corporation, its sole  
general partner

By: \_\_\_\_\_  
Its: \_\_\_\_\_



STATE OF ILLINOIS        )  
                              ) SS.  
COUNTY OF COOK         )

I HEREBY CERTIFY that on this \_\_\_\_th day of \_\_\_\_\_, 1996 before me personally appeared \_\_\_\_\_, the President of Community Economic Redevelopment Corporation, an Illinois corporation, the sole general partner of CERC- MCMILLEN APARTMENTS LIMITED PARTNERSHIP, an Illinois limited partnership, to me known to be the same person who signed the foregoing instrument as his free act and deed as such officer of the general partner of the limited partnership for the use and purpose therein mentioned, and that the said instrument is the act and deed of said limited partnership.

WITNESS my signature and official seal at Chicago in the County of Cook and State of Illinois the day and year last aforesaid.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

EXHIBIT "A"

LEGAL DESCRIPTION

\*\*\*PARCEL 1:

Permanent Real Estate Index No. 65-2029-0240 through 65-2029-0246

Common Address: McMillen Apartments, Fort Wayne, Indiana



EXHIBIT "B"

PERMANENT IDENTIFICATION NUMBERS

65-2029-0240 through 65-2029-0246

EXHIBIT "C"

PERMITTED EXCEPTIONS

The Bank Mortgage, the Loan secured thereby and any refinancings of such Loan, from time to time, including without limitation of the foregoing, any refinancing which (i) increases the principal amount secured by such Bank Mortgage, (ii) changes the interest rate or the term of the loan, or (iii) otherwise materially changes the terms of such loan, shall be a Permitted Exception as such term is used in the foregoing mortgage; provided, however, that in the case of any such refinanced indebtedness the annual debt service on such refinanced debt shall not exceed \$220,000.00 per year.

\$1,200,000.00

Fort Wayne, Indiana  
October 1, 1996

## **SUBORDINATED MORTGAGE NOTE AND LOAN AGREEMENT**

THIS SUBORDINATED MORTGAGE NOTE AND LOAN AGREEMENT ("Note") is made in Fort Wayne, Indiana as of October 1, 1996, in consideration for the loan of One Million Two Hundred Thousand and 00/100 Dollars (\$1,200,000.00) with interest as provided herein.

### **1. Recitals.**

A. CERC - McMillen Apartments Limited Partnership, an Illinois limited partnership ("Maker"), has purchased with the assistance of the City of Fort Wayne, Indiana (the "Lender") that certain parcel of real property (the "Property") located in Fort Wayne, Indiana and commonly known as McMillen Park Apartments, Fort Wayne Indiana. This Note is given in consideration for a loan made by the Lender to the Maker to pay the balance of the purchase price payable by the Maker for the Property and/or certain acquisition related costs. Lender and any subsequent holder from time to time of this Note is referred to as "Payee".

B. This Note is secured by a certain Junior Mortgage and Security Agreement with Assignment of Rents ("Mortgage"), dated of even date herewith, executed and delivered by Maker to Lender, encumbering certain interests in real and personal property on the Property.

C. The Maker acknowledges that the Lender provided the principal sum of this Note to the Maker pursuant to a loan arrangement between the Lender and the U.S. Department of Housing and Urban Development pursuant to the Section 108 loan program as administered by Lender.

### **2. Payments of Principal and Interest.**

A. Maker hereby promises to pay to the order of Payee the principal sum of One Million Two Hundred Thousand and 00/100 Dollars (\$1,200,000.00), together with interest on the principal amount from time to time outstanding at the rate (the "Base Rate") established by the U.S. Department of Housing and Urban Development ("HUD") upon the sale of the collective 108 security obligation ("Security") by which this loan is financed.

Maker shall pay to the Payee, not less than 10 business days prior to the payment due date as established by HUD, any payments necessary to fund interim interest payments to HUD with respect to the principal amount of this Note prior to the sale of the Security. Maker shall repay Lender for any prepaid interest or transaction fees incurred by Lender in obtaining from HUD the funding used to make the loan represented by this Note. Any credit given by HUD against the principal balance of the loan amount due shall be credited against the unpaid portion of this Note.



On the dates set forth in such Schedule A, attached hereto and made a part hereof, the Maker shall pay to the Payee a principal payment in the amount set forth in Schedule A for such date, together with accrued and unpaid interest on the principal amount from time to time outstanding, in the case of the first such payment, for the period from the date hereof to January 1, 1997, and in the case of all other payments, for the period from the immediately prior payment date to the date of such payment; provided, however, that such payment shall only be made to the extent of 50% of the Maker's Cash Flow, as defined below, with respect to the six months immediately preceding such payment date, up to a maximum total annual payment of \$114,000. Accrued but unpaid interest shall remain an obligation of the Maker but shall not be added to the principal amount of this Note. On the Maturity Date, as defined below, Maker shall pay to Payee the entire outstanding principal balance of this Note, together with all accrued unpaid interest thereon.

As used herein, the term "Maturity Date" shall mean either: (i) July 1, 2016 or (ii) such earlier date on which the entire outstanding principal balance, together with accrued and unpaid interest thereon are due and payable by reason of the acceleration of the maturity of this Note.

As used herein, the term "Cash Flow" shall mean cash generated, during the applicable period, from the operation of Property or any other improvements that may be placed upon such real estate less, with respect to such period, (1) all cash expenditures of Maker with respect to such real estate and improvements, including without limitation, utility costs, payroll, and management fees paid pursuant to all management agreements entered into on, prior to or after the date hereof, but excluding any incentive management fees payable to Community Economic Redevelopment Corporation, (2) principal, interest and other payments with respect to the debt of the Maker to \_\_\_\_\_ Bank secured by a first mortgage on the Property and all refinancing thereof permitted under the Mortgage (the "Bank Debt"), but excluding all other indebtedness of the Maker for money borrowed, (3) capital contributions and loan proceeds, (4) capital expenditures required to maintain the Property in the condition in which it will be placed following the rehabilitation of the Property currently being undertaken by the Maker, and (5) reasonable reserves for (i) liabilities not yet due and payable with respect to the Property (ii) repairs and replacements and (iii) working capital reasonably required in the operation of the business of the Maker in the amount of \$53,500.00. In the event that the Property is sold, all expenditures incurred by the Maker prior to the sale or in connection with such sale and the Bank Debt shall be paid prior to any payments being made with respect to the Note.

B. After an Event of Default hereunder (as hereinafter defined), any sums remaining unpaid hereunder shall bear interest at the "Default Interest Rate". The "Default Interest Rate" shall mean the sum of the Base Rate plus three percent (3%) per annum in excess of the Base Rate.

C. Interest shall be computed on the basis of a three hundred sixty (360) day year (based upon the actual days elapsed). All payments on account of the indebtedness evidencing the Note shall first be applied to late charges and costs and fees incurred by Payee in enforcing its rights hereunder or under the Mortgage, next to interest on the unpaid principal balance and the remainder to reduce unpaid principal.

D. If any installment of principal or interest due hereunder, or any monthly deposit for taxes or insurance if required under the Mortgage, shall become overdue for fifteen (15) days after the date when due, the undersigned shall pay to the holder hereof on demand a "late charge" of two cents (\$.02) for each dollar so overdue, in order to defray part of the increased cost of collection occasioned by any such late payment, as liquidated damages and not as a penalty.

E. Payment of all amounts due under this Note shall be made to Payee, at City of Fort Wayne, Indiana - Community Development Department, 1 Main Street, Room 830, Fort Wayne, Indiana, 46802 or such other place as Payee may from time to time designate in writing.

F. Notwithstanding any provisions of this Note or any instrument securing payment of the indebtedness evidenced by this Note to the contrary, it is the intent of Maker and Payee that Payee shall never be entitled to receive, collect or apply, as interest on principal of the indebtedness, any amount in excess of the maximum rate of interest permitted to be charged by applicable law; and if under any circumstance whatsoever, fulfillment of any provision of this Note, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by applicable law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and in the event Payee ever receives, collects or applies as interest any such excess, such amount which would be excess interest shall be deemed a permitted partial prepayment of principal without penalty or premium and treated hereunder as such; and if the principal of the indebtedness secured hereby is paid in full, any remaining excess funds shall forthwith be paid to Maker. In determining whether or not interest of any kind payable hereunder, under any specific contingency, exceeds the highest lawful rate, Maker and Payee shall, to the maximum extent permitted under applicable law, (1) characterize any non-principal payment as an expense, fee or premium rather than as interest and (2) amortize, prorate, allocate and spread to the end such payment so that the interest on account of such indebtedness does not exceed the maximum amount permitted by applicable law. Payee shall not be subject to any penalties provided by any laws for contracting for, charging or receiving interest in excess of the maximum lawful rate.

3. Prepayment. Maker shall have the right to prepay all or any part of the principal balance of this Note without penalty.

4. Refinancing Covenant. Maker covenants to use its best efforts to refinance the Bank Debt and as much of the principal amount of this Note as possible, but not less than \$400,000 of the principal amount of this Note, in a single transaction, on or prior to July 1, 2006; provided however that Maker shall not be required to enter into any such refinancing arrangement which will have a balloon payment or uneven monthly payments or result in annual debt service on such refinanced debt being in an amount greater than the sum of (i) the annual debt service on the Bank Debt and (ii) 50% of the arithmetic average of the Cash Flow for the three calendar years immediately preceding the date of such refinancing; further, provided that Payee shall consent to the entire amount of such refinanced indebtedness being secured by a first mortgage on the Property superior to the mortgage securing this Note. In no event, if as a result of such refinancing any amounts shall remain outstanding hereunder, shall the refinancing create any



additional indebtedness, secured by a mortgage with a priority superior to that of City of Fort Wayne under the Mortgage, other than indebtedness to a single lender refinancing solely the Bank Debt and a portion of the principal amount of this Note.

5. Default and Remedies.

A. In the event (i) default is made in the payment of any part of the principal or interest due pursuant to this Note or of any other sums owed pursuant to the terms of this Note or the Mortgage and Maker fails to cure such default within one hundred eighty (180) days of written notice thereof to Maker, or (ii) default is made in the performance or observance of any covenant, agreement, term or condition contained in this Note (other than as specified in clause (i) above), and such default shall continue for one hundred eighty (180) days after written notice thereof to Maker; provided, however, that if such default by its nature cannot be cured within said one hundred eighty (180) days and Maker so notifies Payee and promptly initiates and diligently proceeds to cure such default, the period for curing such default shall be extended for up to an additional one hundred eighty (180) days, or (iii) there shall be a default under the Mortgage (other than as specified in clause (i) above) that is not cured after any applicable grace periods in the Mortgage and within one hundred eighty (180) days after written notice thereof to Maker; provided, however, that if such default by its nature cannot be cured within said one hundred eighty (180) days and Maker so notifies Payee and promptly initiates and diligently proceeds to cure such default, the period for curing such default shall be extended for up to an additional one hundred eighty (180) days, then in the case of any of the defaults set forth above (an "Event of Default"), Payee shall have the option, without demand or notice, to declare the unpaid principal of this Note, together with all accrued interest, and other sums secured by the Mortgage at once due and payable to the extent permitted by law, to foreclose the Mortgage and all other liens or security interests securing the payment of the Note, and to exercise any and all other rights and remedies available at law or in equity or under the Mortgage.

B. The remedies of Payee, as provided herein or in the Mortgage shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of Payee, and may be exercised as often as occasion therefor shall arise. No act of omission or commission of Payee, including specifically any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of the same, such waiver or release to be effected only through a written document executed by Payee and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as continuing, as a bar to, or as a waiver or release of, any subsequent right, remedy or recourse as to a subsequent event.

6. Waiver. Except as otherwise expressly provided herein or in the Mortgage each maker, surety and endorser hereon waives grace, notice, notice of intent to accelerate, notice of default, protest, demand, presentment for payment and diligence in the collection of this Note, and in the filing of suit hereon, and agrees that his or its liability and the liability of his or its heirs, beneficiaries, successors and assigns for the payment hereof shall not be affected or impaired by any release or change in the security or by any increase, modification, renewal or extension of the indebtedness or its mode and time of payment. It is specifically agreed by the



undersigned that the Payee shall have the right at all times to decline to make any such release or change in any security given to secure the payment hereof and to decline to make any such increase, modification, renewal or extension of the indebtedness or its mode and time of payment.

7. Nonpermitted Transfers. Paragraph 18 of the Mortgage provides that any sale, transfer, other alienation or further encumbrance of the premises encumbered thereby (collectively, the "Property"), other than as expressly permitted therein, constitutes an Event of Default thereunder. In such event, the holder of this Note shall have the right to invoke any remedies therein provided including, without limitation, the right to declare immediately due and payable the entire outstanding principal balance of this Note, together with all accrued interest, prepayment premium, if any, and all other sums secured by the Mortgage.

8. Notices. All notices or other communications required or permitted hereunder shall be (a) in writing and shall be deemed to be given when either (i) delivered in person, (ii) three business days after deposit in a regularly maintained receptacle of the United States mail as registered or certified mail, postage prepaid, (iii) when received if sent by private courier service or by facsimile transmission, or (iv) on the day on which the party to whom such notice is addressed refuses delivery by mail or by private courier service, and (b) addressed as follows:

If to Maker: CERC - McMillen Apartments Limited Partnership  
5519 South Dorchester  
Chicago, Illinois 60637

With copy to: Scott I. Canel & Associates  
10 South LaSalle Street  
Suite 3440  
Chicago, Illinois 60603  
Attn: Scott I. Canel

If to Lender: City of Fort Wayne - Department of Community Development  
1 Main Street, Room 830  
Fort Wayne, Indiana 46802

With copy to  
City Attorney: David Boyer, Esq.  
Helmke Beam Boyer and Wagner  
300 Metro Building  
Fort Wayne, Indiana 46802

9. Miscellaneous.

A. The headings of the paragraphs of this Note are inserted for convenience only and shall not be deemed to constitute a part hereof.

B. All payments under this Note shall be payable in lawful money of the United States which shall be legal tender for public and private debts at the time of payment; provided that a check will be deemed sufficient payment so long as it clears when presented for payment. Each payment of principal or interest under this Note shall be paid not later than 4:00 P.M. Fort Wayne, Indiana time on the date due therefor and funds received after that hour shall be deemed to have been received by Payee on the following day. Except as otherwise provided herein, all payments (whether of principal, interest or other amounts) which are applied at any time by Payee to indebtedness evidenced by this Note may be allocated by Payee to principal, interest or other amounts as Payee may determine in Payee's sole discretion.

C. This Note has been made and delivered at Fort Wayne, Indiana.

D. The obligations and liabilities under this Note of the Maker shall be binding upon and enforceable against the Maker and its heirs, legatees, legal representatives, successors and assigns. This Note shall inure to the benefit of and may be enforced by Payee, its successors and assigns.

10. Severability. If any provision of this Note or any payments pursuant to the terms hereof shall be invalid or unenforceable to any extent, the remainder of this Note and any other payments hereunder shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

11. Choice of Laws. This Note shall be governed by and construed in accordance with the laws of the State of Indiana

12. Venue/Waiver of Jury Trial. MAKER IRREVOCABLY AGREES THAT, SUBJECT TO PAYEE'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT ARISING OUT OF, OR FROM, OR RELATED TO, THIS NOTE SHALL BE LITIGATED ONLY IN COURTS HAVING A SITUS WITHIN FORT WAYNE, INDIANA. MAKER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SUCH CITY. MAKER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH. MAKER HEREBY IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH MAKER AND PAYEE ARE PARTIES. MAKER HEREBY WAIVES PERSONAL SERVICE OF PROCESS IN ANY SUIT COMMENCED IN CONNECTION WITH THIS INSTRUMENT, AGREES AND CONSENTS THAT SERVICE OF PROCESS BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO THE LAST KNOWN ADDRESS OF MAKER SHALL BE SATISFACTORY SERVICE OF PROCESS IN CONNECTION WITH ANY SUIT BROUGHT IN CONNECTION WITH THIS INSTRUMENT AND AGREES THAT SUCH SERVICE OF PROCESS SHALL BE DEEMED COMPLETED TEN (10) DAYS AFTER MAILING THEREOF.

13. Nonrecourse Nature of Payments. Neither the Maker, nor any general or limited partner of the Maker, nor any incorporator, director, shareholder or officer of any partner of the

Maker shall have any personal liability for any sum payable hereunder. The covenant of the Maker to pay amounts hereunder is for the sole purpose of establishing the existence of the indebtedness set forth in this Note. However, it is a condition of the covenants set forth herein that in the event of default under the terms hereof, Payee shall take no action against the Maker personally nor against its general or limited partners nor any or their incorporators, directors, shareholders or officers, except such as may be necessary to subject to the satisfaction of the indebtedness set forth in this Note, the Property described in the Mortgage and any chattels appurtenant to the use thereof.

14. Subordination. Maker's payment obligations under this Note constitute "Subordinated Debt", as defined in that certain Subordination Agreement of even date herewith by and among Maker, Lender and \_\_\_\_\_ Bank.

IN WITNESS WHEREOF, Maker has executed, sealed and delivered this Note as of the date and year first above written.

CERC - McMILLEN APARTMENTS LIMITED PARTNERSHIP,  
an Illinois limited partnership

By: Community Economic Redevelopment Corporation,  
an Illinois not-for-profit corporation, its sole general partner

By: \_\_\_\_\_  
Its: \_\_\_\_\_



SCHEDULE A

<u>Year</u>	<u>January 1</u>	<u>July 1</u>
1997	\$15,000	\$15,000
1998	\$15,000	\$15,000
1999	\$17,500	\$17,500
2000	\$17,500	\$17,500
2001	\$20,000	\$20,000
2002	\$20,000	\$20,000
2003	\$22,500	\$22,500
2004	\$25,000	\$25,000
2005	\$25,000	\$25,000
2006	\$27,500	\$27,500
2007	\$30,000	\$30,000
2008	\$30,000	\$30,000
2009	\$32,500	\$32,500
2010	\$35,000	\$35,000
2011	\$37,500	\$37,500
2012	\$40,000	\$40,000
2013	\$42,500	\$42,500
2014	\$45,000	\$45,000
2015	\$50,000	\$50,000
2016	\$52,500	\$52,500

**JUNIOR MORTGAGE  
AND  
SECURITY AGREEMENT  
WITH  
ASSIGNMENT OF RENTS**

THIS JUNIOR  
MORTGAGE AND SECURITY  
AGREEMENT WITH  
ASSIGNMENT OF RENTS  
("Mortgage") dated as  
of October 1, 1996 from  
CERC - McMillen

Apartments Limited Partnership, an Illinois limited partnership  
("Mortgagor"), with a mailing address of 5519 South Dorchester  
Avenue, Chicago, IL 60637, to and for the benefit of the City of  
Fort Wayne, Indiana with a mailing address of City of Fort Wayne -  
Department of Community Development, 1 Main Street, Room 830, Fort  
Wayne, Indiana 46802, (hereinafter referred to as "Mortgagee").

**W I T N E S S E T H     T H A T:**

WHEREAS, Mortgagor has executed and delivered to Mortgagee  
that certain Subordinated Mortgage Note and Loan Agreement payable  
to Mortgagee bearing even date herewith in the principal amount of  
\$1,200,000.00 (said Note and any and all extensions and renewals  
thereof, amendments thereto, and substitutions or replacements  
therefor is referred to herein as the "Note") pursuant to which  
Mortgagor promises to pay said principal sum (or so much thereof as  
may be outstanding at the maturity thereof) on or before July 1,  
2016, together with interest on the balance of principal from time  
to time outstanding and unpaid thereon at the rate and at the times  
specified in the Note as part of the purchase price of the  
"Mortgaged Premises" (as defined below) pursuant to that certain  
Real Estate Sales Contract dated as of November 29, 1995, (the  
"Purchase Contract") between Community Economic Redevelopment  
Corporation and McMillen Park Apartments Land Trust; and

**This Instrument Prepared By  
and After Recording Return to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Permanent Index Numbers:**

See Exhibit "B"

**Address of Property:**

3209 Plaza Drive  
Fort Wayne, Indiana

WHEREAS, the real estate that is encumbered by this Mortgage  
and which forms part of the "Mortgaged Premises" (as defined below)  
consists of real estate located in Fort Wayne, Indiana, as more  
particularly described in GRANTING CLAUSE I below; and

WHEREAS, the Mortgagor has expended considerable effort to promote its goal of creating desirable affordable housing for low income households suitable for elderly and handicapped people;

WHEREAS, this Mortgage, the Note and all other instruments and documents evidencing or securing the indebtedness evidenced by the Note are hereinafter collectively referred to as the "Loan Documents"; and

WHEREAS, the Mortgaged Premises to become subject to an existing mortgage of \_\_\_\_\_ Bank ("Bank") pursuant to that certain Mortgage and Security Agreement with Assignment of Rents ("Bank Mortgage") dated \_\_\_\_\_, 1996, which Bank Mortgage secures Bank's loan ("Loan") to Mortgagee; and

NOW, THEREFORE, to secure (i) the payment when and as due and payable of the principal of and interest on the Note or so much thereof as may be advanced from time to time, (ii) the payment of all other indebtedness which this Mortgage by its terms secures and (iii) the performance and observance of the covenants and agreements contained in this Mortgage, the Note and any other Loan Documents, (all of such indebtedness, obligations and liabilities identified in (i), (ii) and (iii) above being hereinafter referred to as the "indebtedness hereby secured"), the Mortgagor does hereby grant, sell, convey, mortgage and assign unto the Mortgagee, its successors and assigns and does hereby grant to Mortgagee, its successors and assigns a security interest in all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI and VII below all of same being collectively referred to herein as the "Mortgaged Premises":

#### GRANTING CLAUSE I

That certain parcel of real estate lying and being in the County of Allen and State of Indiana, more particularly described in Exhibit "A" attached hereto and made a part hereof.

#### GRANTING CLAUSE II

All buildings and improvements of every kind and description heretofore or hereafter erected or placed on the property described in Granting Clause I and all materials intended for construction, reconstruction, alteration and repair of the buildings and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the said real estate, all fixtures, machinery, apparatus, equipment, fittings and articles of personal property of every kind and nature whatsoever now or hereafter attached to or contained in or used in connection with said real estate and the buildings and improvements now or hereafter located thereon and the operation, maintenance and



protection thereof, including but not limited to, all machinery, motors, fittings, radiators, awnings, shades, screens, all gas, coal, steam, electric, oil and other heating, cooking, power and lighting apparatus and fixtures, all fire prevention and extinguishing equipment and apparatus, all cooling and ventilating apparatus and systems, all plumbing, incinerating, sprinkler equipment and fixtures, all elevators and escalators, all communication and electronic monitoring equipment, all window and structural cleaning rigs and all other machinery and other equipment of every nature and fixtures and appurtenances thereto and all items of furniture, appliances, including, without limitation, ranges, refrigerators, dishwashers, draperies, carpets, other furnishings, equipment and personal property used or useful in the operation, maintenance and protection of the said real estate and the buildings and improvements now or hereafter located thereon and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said buildings or improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage; and as to the balance of the property aforesaid, this Mortgage is hereby deemed to be as well a security agreement under the provisions of the Uniform Commercial Code for the purpose of creating hereby a security interest in said property, which is hereby granted by Mortgagor as debtor to Mortgagee as secured party, securing the indebtedness hereby secured. The addresses of Mortgagor (debtor) and Mortgagee (secured party) appear at the beginning hereof.

### GRANTING CLAUSE III

All right, title and interest of Mortgagor now owned or hereafter acquired in and to all and singular the estates, tenements, hereditaments, privileges, easements, licenses, franchises, appurtenances and royalties, mineral, oil and water rights belonging or in any wise appertaining to the property described in the preceding Granting Clause I and the buildings and improvements now or hereafter located thereon and the reversions, rents, issues, revenues and profits thereof, including all interest of Mortgagor in all rents, issues and profits of the aforementioned property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advance rent or for security) under any and all leases and renewals thereof or under any contracts or options for the sale of all or any part of said property (including during any period allowed by law for the redemption of said property after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the indebtedness hereby secured and to demand, sue for and recover the same when due or payable; provided that the assignments made hereby shall not impair or diminish the obligations of Mortgagor under the provisions of such leases or other agreements nor shall such

obligations be imposed upon Mortgagee. By acceptance of this Mortgage, Mortgagee agrees that until an Event of Default (as hereinafter defined) shall occur giving Mortgagee the right to foreclose this Mortgage, Mortgagor may collect, receive (but not more than 30 days in advance) and enjoy such rents.

#### GRANTING CLAUSE IV

All judgments, awards of damages, settlements and other compensation hereafter made resulting from condemnation proceedings or the taking of the property described in Granting Clause I or any part thereof or any building or other improvements now or at any time hereafter located thereon or any easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to said property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including severance and consequential damage, and any award for change of grade of streets (collectively "Condemnation Awards").

#### GRANTING CLAUSE V

All property and rights, if any, which are by the express provisions of this instrument required to be subjected to the lien hereof and any additional property and rights that may from time to time hereafter by installation or writing of any kind, be subjected to the lien hereof.

#### GRANTING CLAUSE VI

All rights in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and any after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the property described in Granting Clause I or any part thereof.

#### GRANTING CLAUSE VII

All rights received to or granted to the developer and declarant under the provisions of the Declaration of Condominium Ownership and By-Laws (as such term is defined in Paragraph 20 hereof), if any, with respect to the Mortgaged Premises or otherwise granted to the developer pursuant to the provisions of the Condominium Act.



TO HAVE AND TO HOLD the Mortgaged Premises and the properties, rights and privileges hereby granted, bargained, sold, conveyed, mortgaged, pledged and assigned, and in which a security interest is granted, unto Mortgagee, its successors and assigns, forever; provided, however, that this instrument is upon the express condition that if the principal of and interest on the Note shall be paid in full and all other indebtedness hereby secured shall be fully paid and performed, then this instrument and the estate and rights hereby granted shall cease, determine and be void and this instrument shall be released by Mortgagee upon the written request and at the expense of Mortgagor, otherwise the same shall remain in full force and effect.

Mortgagor hereby covenants and agrees with Mortgagee as follows:

1. Payment of the Indebtedness. The indebtedness hereby secured will be promptly paid as and when the same becomes due.

2. Representation of Title and Further Assurances; Multiple Parcels. Mortgagor will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this instrument and, without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the Granting Clauses hereof or intended so to be. At the time of delivery of these presents, the Mortgagor is well seized of an indefeasible estate in fee simple in the portion of the Mortgaged Premises which constitutes real property subject only to the matters set forth on Exhibit "C" attached hereto and forming a part hereof (the "Permitted Exceptions"), and Mortgagor has good right, full power and lawful authority to convey, mortgage and create a security interest in the same, in the manner and form aforesaid; except for the Permitted Exceptions, the same is free and clear of all liens, charges, easements, covenants, conditions, restrictions and encumbrances whatsoever, including the personal property and fixtures, security agreements, conditional sales contracts and anything of a similar nature, and the Mortgagor shall and will forever defend the title to the Mortgaged Premises against the claims of all persons whomsoever. Each and every representation, warranty and covenant contained in this Mortgage with respect to the property described in GRANTING CLAUSE I shall be deemed to apply to the parcel of real estate legally described on Exhibit "A" attached hereto.

3. Payment of Taxes. Mortgagor shall pay before any penalty attaches all general taxes and all special taxes, special assessments, water, drainage and sewer charges and all other charges, of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed, imposed or charged on or against the Mortgaged Premises or any part thereof and which, if unpaid, might by law become a lien or charge upon the Mortgaged Premises or any part thereof, and shall exhibit to Mortgagee official receipts evidencing such payments, except that, unless and until foreclosure, distraint, sale or other similar proceedings shall



have been commenced, no such charge or claim need be paid if being contested (except to the extent any full or partial payment shall be required by law), after notice to Mortgagee, by appropriate proceedings which shall operate to prevent the collection thereof or the sale or forfeiture of the Mortgaged Premises or any part thereof to satisfy the same, and shall be conducted in good faith and with due diligence, and if Mortgagor shall have furnished such security, if any, as may be required in the proceedings or required by Mortgagee's title insurer to insure over the lien of such charge or claim.

4. Payment of Taxes on Note, Mortgage or Interest of Mortgagee. Mortgagor agrees that if any tax, assessment or imposition upon this Mortgage or the indebtedness hereby secured or the Note or the interest of Mortgagee in the Mortgaged Premises or upon Mortgagee by reason of any of the foregoing (including, without limitation, corporate privilege, franchise and excise taxes, but excepting therefrom any income tax on interest payments on the principal portion of the indebtedness hereby secured imposed by the United States or any State) is levied, assessed or charged, then, unless all such taxes are paid by Mortgagor to, for or on behalf of Mortgagee as they become due and payable (which Mortgagor agrees to do upon demand of Mortgagee, to the extent permitted by law), or Mortgagee is reimbursed for any such sum advanced by Mortgagee, all sums hereby secured shall become immediately due and payable, at the option of Mortgagee upon thirty (30) days' notice to Mortgagor, notwithstanding anything contained herein or in any law heretofore or hereafter enacted, including any provision thereof forbidding Mortgagor from making any such payment. Mortgagor agrees to provide to Mortgagee, upon request, official receipts showing payment of all taxes and charges which Mortgagor is required to pay hereunder.

5. Tax and Insurance Deposits. Upon the written request of Mortgagee, Mortgagor covenants and agrees to deposit with Mortgagee on the first day of each month until the indebtedness secured by this Mortgage is fully paid, a sum equal to (i) one-twelfth (1/12th) of the annual taxes and assessments (general and special) on the Mortgaged Premises and (ii) one-twelfth (1/12th) of the annual insurance premiums payable for the insurance required to be maintained by Mortgagor in accordance with Paragraph 8 hereof. If prior deposits are insufficient, Mortgagor shall deposit with Mortgagee an amount of money which, together with the aggregate of the monthly deposits made or to be made pursuant to (i) above as of one month prior to the date on which the total annual taxes and assessments for the current calendar year become due, shall be sufficient to pay in full the total annual taxes and assessments estimated by Mortgagee to become due and payable with respect to the Mortgaged Premises for the current calendar year, and an amount of money which, together with the aggregate deposits made or to be made pursuant to (ii) above as of one month prior to the date on which the next annual insurance premium becomes due shall be sufficient to pay in full the total annual insurance premium estimated by Mortgagee to next become due and payable with respect to the Mortgaged Premises. Such deposits are to be held without

any allowance of interest and are to be used for the payment of taxes and assessments (general and special) and insurance premiums, respectively, on the Mortgaged Premises next due and payable when they become due. Mortgagee may, at its option, itself pay such taxes, assessments and insurance premiums when the same become due and payable (upon submission of appropriate bills therefor from Mortgagor) or shall release sufficient funds to Mortgagor for payment of such taxes, assessments and insurance premiums. If the funds so deposited are insufficient to pay any such taxes, assessments (general or special) and insurance premiums for any year when the same shall become due and payable, Mortgagor shall within ten (10) days after receipt of demand therefor, deposit additional funds as may be necessary to pay such taxes, assessments (general and special) and insurance premiums in full. If the funds so deposited exceed the amount required to pay such taxes, assessments (general and special) and insurance premiums for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of Mortgagee. Notwithstanding the foregoing, so long as the Mortgagor is making deposits of the type set forth above pursuant to the Bank Mortgage, the Mortgagor shall not be required to make any such deposits under this Section 5.

6. Mortgagee's Interest In and Use of Deposits. Upon the occurrence of an Event of Default under this Mortgage, the Note or any other document securing the Note, the Mortgagee may at its option, without being required so to do, apply any monies at the time on deposit pursuant to Paragraph 5 hereof to the performance of any of Mortgagor's obligations hereunder or under the Note, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be irrevocably applied by Mortgagee for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that Mortgagee shall not be liable for any failure to apply to the payment of taxes and assessments any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested Mortgagee in writing to make application of such funds to the payment of which they were deposited, accompanied by the bills for such taxes and assessments. Mortgagee shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party.

7. Recordation and Payment of Taxes and Expenses Incident Thereto. Mortgagor will cause this Mortgage, all mortgages supplemental hereto and any financing statement or other notices of a security interest required by Mortgagee at all times to be kept, recorded and filed at its own expense in such manner and in such places as may be required by law for the recording and filing or for the rerecording and refileing of a mortgage, security interest, assignment or other lien or charge upon the Mortgaged Premises, or any part thereof, in order fully to preserve and protect the rights of Mortgagee hereunder, and, without limiting the foregoing, Mortgagor will pay or reimburse Mortgagee for the payment of any



and all taxes, fees or other charges incurred in connection with any such recordation or re-recordation, including any documentary stamp tax or tax imposed upon the privilege of having this instrument or any instrument issued pursuant hereto recorded.

8. Insurance.

(a) Mortgagor will, at its expense, maintain or cause to be maintained the following insurance with good and responsible insurance companies reasonably satisfactory to Mortgagee:

(i) All risk broad form insurance with standard non-contributory mortgage clauses providing that any loss is to be adjusted with, and any recovery payable to the Bank and the Mortgagee as their interests may appear. All such policies shall be in such amounts, containing such coverages and insure against such risks as shall be reasonably satisfactory to the Mortgagee. Without limiting the generality of the foregoing, the improvements shall be insured for one hundred percent (100%) of their replacement value at all times against loss or damage by fire, lightning, windstorm, explosion, theft and such other risks as are usually intended under extended coverage;

(ii) Commercial general liability insurance, in form and amount satisfactory to Mortgagee, insuring Mortgagor, Mortgagee and such other persons as Mortgagee may designate, as their interests may appear, against any loss or damage for personal injury, death and property damage occasioned by an accident or casualty occurring in, upon or about the Mortgaged Premises or the sidewalks, alleys or other property adjacent thereto;

(iii) In the event that Mortgagor contracts with or employs any person or persons upon the Mortgaged Premises, worker's compensation insurance, insuring Mortgagor and such other persons as Mortgagee may designate, as their interests may appear, against loss or damages resulting from any accident or casualty within the purview of the Indiana Worker's Compensation Law;

(iv) Rent loss insurance in an amount of not less than one (1) year's rental on the Mortgaged Premises; and

(v) Such other insurance against other insurance hazards that Mortgagee may reasonably require or which are commonly insured against in the case of property similarly situated.

(b) Policy Provisions. All insurance maintained by Mortgagor shall be maintained with good and responsible insurance companies, shall provide that no cancellation thereof shall be effective until at least 30 days after receipt by the Mortgagee of written notice thereof, shall provide that losses are payable notwithstanding any acts or omissions of Mortgagor, shall contain no deductible



provisions in excess of \$5,000.00 and shall be satisfactory to Mortgagee in all other respects.

(c) Renewal Policies. Mortgagor will deliver to the Mortgagee the original of any policy or a certificate therefor required under the provisions of this Paragraph 8(c) (or, if coverage is provided under a master policy, a photocopy of such policy and an signed certificate of insurance) and will cause renewal certificates to be delivered thereto at least 15 days prior to the expiration of any such policies and renewal policies as soon as available.

(d) Additional Policies. Mortgagor shall not take out or maintain separate insurance concurrent in kind or form or contributing in the event of loss with any insurance required hereinabove.

In the event of foreclosure, Mortgagor authorizes and empowers Mortgagee to effect insurance upon the Mortgaged Premises in the amounts aforesaid, for a period covering the time of redemption from foreclosure sale provided by law, and if necessary therefor, to cancel any or all existing insurance policies.

9. Damage to and Destruction of the Improvements.

(a) Notice. In the case of any material damage to or destruction of any improvements which are or will be constructed on the Mortgaged Premises or any part thereof, Mortgagor shall promptly give notice thereof to Mortgagee generally describing the nature and extent of such damage or destruction. Material damage shall mean damages in excess of \$5,000.00.

(b) Restoration. Upon the occurrence of any damage to or destruction of any improvements on the Mortgaged Premises, provided Mortgagee and the Bank permit the proceeds of insurance to be used for repairs, Mortgagor shall cause the same to be restored, replaced or rebuilt as nearly as possible to their value, condition and character immediately prior to such damage or destruction. Such restoration, replacement or rebuilding shall be effected promptly and Mortgagor shall notify the Mortgagee if it appears that such restoration, replacement or rebuilding may unduly delay completion of such improvements. Any amounts required for repairs in excess of insurance proceeds shall be paid by Mortgagor.

(c) Application of Insurance Proceeds. Net insurance proceeds received by the Mortgagee under the provisions of this Mortgage or any instrument supplemental hereto or thereto or any policy or policies of insurance covering any improvements on the Mortgaged Premises or any part thereof, or if received by or on behalf of the Mortgagor shall be applied, if their application is not mandated by the Bank pursuant to the Bank Mortgage, by the Mortgagee at its option as and for a prepayment on the Note (whether or not the same is then due or otherwise adequately secured) or shall be disbursed for restoration of such improvements (in which event the Mortgagee shall not be obligated to supervise

restoration work nor shall the amount so released or used be deemed a payment of the indebtedness evidenced by the Note). Notwithstanding the foregoing, Mortgagor shall be entitled to receive insurance proceeds for use in reconstruction if the amount required to reconstruct is \$200,000.00 or less. If Mortgagee elects to permit the use of insurance proceeds to restore such improvements it may do all necessary acts to accomplish that purpose including using funds deposited by Mortgagor with it for any purpose and advancing additional funds, all such additional funds to constitute part of the indebtedness secured by the Mortgage. If Mortgagee elects to make the insurance proceeds available to Mortgagor for the purpose of effecting such a restoration, or, following an Event of Default, elects to restore such improvements, any excess of insurance proceeds above the amount necessary to complete such restoration shall be applied as and for a prepayment on the Note. Any insurance proceeds to be released pursuant to the foregoing provisions may at the option of Mortgagee be disbursed from time to time as restoration progresses to pay for restoration work completed and in place and such disbursements shall be disbursed in such manner as Mortgagee may reasonably determine. Mortgagee may impose such further conditions upon the release of insurance proceeds (including the receipt of title insurance) as are customarily imposed by prudent construction lenders to insure the completion of the restoration work free and clear of all liens or claims for lien. All necessary and reasonable title insurance charges and other costs and expenses paid to or for the account of Mortgagee in connection with the release of such insurance proceeds shall constitute so much additional indebtedness secured by this Mortgage to be payable upon demand and if not paid upon demand shall bear interest at the Default Interest Rate (as defined in Paragraph 40 hereof). Mortgagee may deduct any such reasonable costs and expenses from insurance proceeds at any time held by Mortgagee. No interest shall be payable to Mortgagor upon insurance proceeds held by Mortgagee.

(d) Adjustment of Loss. Subject to the Bank's rights under the Bank Mortgage, Mortgagee is hereby authorized and empowered, at its option, to adjust or compromise any loss of more than \$5,000.00 under any insurance policies covering or relating to the Mortgaged Premises and to collect and receive the proceeds from any such policy or policies; provided, however, that if Mortgagee shall give notice to Mortgagor of Mortgagee's election not to adjust or compromise any such loss, then Mortgagor may adjust or compromise such loss, provided that Mortgagee shall still collect and receive the proceeds from any such policy or policies. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact for the purposes set forth in the preceding sentence. Each insurance company is hereby authorized and directed to make payment (i) of 100% of all such losses of more than said amount directly to Mortgagee alone and (ii) of 100% of all such losses of said amount or less directly to Mortgagor alone, and in no case to Mortgagor and Mortgagee jointly. After deducting from such insurance proceeds any expenses incurred by Mortgagee in the collection and settlement thereof, including without limitation attorneys' and



adjusters' fees and charges, Mortgagee shall apply the net proceeds as provided in Paragraph 9(c). Mortgagee shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

10. Eminent Domain.

(a) Notice. Mortgagor covenants and agrees that Mortgagor will give Mortgagee prompt notice of the actual or threatened commencement of any proceedings under condemnation or eminent domain affecting all or any part of the Mortgaged Premises including any easement therein or appurtenance thereof or severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings.

(b) Assignment of Claim, Power of Attorney to Collect, Etc. Subject to the superior rights of the Bank pursuant to the Bank Mortgage, any and all awards heretofore or hereafter made or to be made to the present and all subsequent owners of the Mortgaged Premises by any governmental body for taking or affecting the whole or any part of said Mortgaged Premises, the improvements on the Mortgaged Premises or any easement therein or appurtenance thereto (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the award for payment thereof) are hereby assigned by Mortgagor to Mortgagee to the extent of the existing principal balance, interest thereon and other outstanding charges owed by Mortgagor to Mortgagee and Mortgagor hereby irrevocably constitutes and appoints Mortgagee its true and lawful attorney-in-fact with full power of substitution for it and in its name, place and stead to collect and receive the proceeds of any such award granted by virtue of any such taking and to give proper receipts and acquittances therefor. Mortgagee shall not settle any condemnation award with the condemning party without the consent of the Mortgagor. Mortgagor shall have the right to participate in any proceedings which determine the award to be granted.

(c) Effect of Condemnation and Application of Awards. In the event that any proceedings are commenced by any governmental body or other person to take or otherwise affect the Mortgaged Premises, the improvements thereon or any easement therein or appurtenance thereto, Mortgagee may, at its option, apply the proceeds of any award made in such proceedings as and for a prepayment on the indebtedness evidenced by the Note, notwithstanding the fact that said indebtedness may not then be due and payable or is otherwise adequately secured.

11. Construction, Repair, Waste, Etc. Mortgagor covenants and agrees (i) that no improvements on the Mortgaged Premises and constituting a part thereof shall be materially altered, removed or demolished nor shall any fixtures or appliances on, in or about said improvements be severed, removed, sold or mortgaged, without the consent of Mortgagee; and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels or



articles of personal property covered hereby, the same will be replaced promptly by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from any security interest in or encumbrance thereon or reservation of title thereto; (ii) to permit, commit or suffer no waste, impairment or deterioration of the Mortgaged Premises or any part thereof, ordinary wear and tear and loss, damage or destruction by casualty (if covered by insurance) excepted; (iii) to keep and maintain said Mortgaged Premises and every part thereof in good repair and condition (ordinary wear and tear excepted); (iv) to effect such repairs as Mortgagee may reasonably require and from time to time to make all needful and proper replacements and additions so that said buildings, fixtures, machinery and appurtenances will, at all times, be in good condition, fit and proper for their respective purposes, ordinary wear and tear excepted; (v) to comply with all statutes, orders, requirements or decrees relating to said Mortgaged Premises by any Federal, State or Municipal authority; and (vi) to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions which are applicable to the Mortgaged Premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the Mortgaged Premises or any part hereof and not to initiate or acquiesce in any changes to or terminations of any of the foregoing or of zoning classifications affecting the use to which the Mortgaged Premises or any part thereof may be put without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed.

12. Liens and Encumbrances. Mortgagor will not, without the prior written consent of Mortgagee, directly or indirectly, create or suffer to be created, or to remain, and will discharge or promptly cause to be discharged any mortgage, lien, encumbrance or charge on, pledge or conditional sale or other title retention agreement with respect to the Mortgaged Premises or any part thereof, whether superior or subordinate to the lien hereof, except for this instrument and the lien of all other documents given to secure the indebtedness hereby secured and except for the Bank Mortgage; provided, however, that Mortgagor may contest the validity of any mechanic's lien, charge or encumbrance (other than the lien of this Mortgage or of any other document securing payment of the Note) upon giving Mortgagee timely notice of its intention to contest the same and either (a) maintaining with Mortgagee a deposit of cash or negotiable securities satisfactory to Mortgagee in an amount sufficient in the opinion of Mortgagee to pay and discharge or to assure compliance with the matter under contest in the event of a final determination thereof adverse to Mortgagor or (b) obtaining title insurance coverage over such lien on Mortgagee's title insurance policy. Mortgagor agrees to prosecute and contest such lien diligently and by appropriate legal proceedings which will prevent the enforcement of the matter under contest and will not impair the lien of this Mortgage or interfere with the normal conduct of business on the Mortgaged Premises. On

final disposition of such contest, any cash or securities in Mortgagee's possession not required to pay or discharge or assure compliance with the matter contested shall be returned to Mortgagor without interest.

13. Right of Mortgagee to Perform Mortgagor's Covenants, Etc. If Mortgagor shall fail to make any payment or perform any act required to be made or performed hereunder, Mortgagee, without waiving or releasing any obligation or default, may (but shall be under no obligation to), at any time thereafter, upon prior written notice to Mortgagor and failure of Mortgagor to make such payment or perform such act within any applicable cure period provided herein, make such payment or perform such act for the account and at the expense of Mortgagor, and may enter upon the Mortgaged Premises or any part thereof for such purpose and take all such action thereon as, in the opinion of Mortgagee, may be necessary or appropriate therefor. All sums so paid by Mortgagee and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) so incurred, together with interest thereon from the date of payment or incurrence at the Default Interest Rate, shall constitute so much additional indebtedness hereby secured and shall be paid by Mortgagor to Mortgagee on demand. Mortgagee in making any payment authorized under this Paragraph relating to taxes or assessments may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim thereof.

14. After-Acquired Property. Any and all property hereafter acquired which is of the kind or nature herein provided and related to the premises described in Granting Clause I hereof, or intended to be and become subject to the lien hereof, shall ipso facto, and without any further conveyance, assignment or act on the part of Mortgagor, become and be subject to the lien of this Mortgage as fully and completely as though specifically described herein; but nevertheless Mortgagor shall from time to time, if requested by Mortgagee, execute and deliver any and all such further assurances, conveyances and assignments as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Mortgage all such property.

15. Inspection by Mortgagee. Mortgagee and its agents shall have the right to inspect the Mortgaged Premises at all reasonable times, and access thereto shall be permitted for that purpose.

16. [Intentionally Omitted.]

17. Environmental Matters.

(a) Definitions: As used herein, the following terms shall have the following meanings:

(i) "Environmental Laws" means all federal, state and local statutes, laws, rules, regulations, ordinances,



requirements, or rules of common law, including but not limited to those listed or referred to in paragraph (b) below, any judicial or administrative interpretations thereof, and any judicial and administrative consent decrees, orders or judgments, whether now existing or hereinafter promulgated, relating to public health and safety and protection of the environment.

(ii) "Hazardous Material" means any above or underground storage tanks, flammables, explosives, accelerants, asbestos, radioactive materials, radon, urea formaldehyde foam insulation, lead-based paint, polychlorinated biphenyls, petroleum or petroleum based or related substances, hydrocarbons or like substances and their additives or constituents, methane, solid wastes, refuse, garbage, construction debris, rubble, hazardous materials, hazardous wastes, toxic substances or related materials, and including, without limitation, substances now or hereafter defined as "hazardous substances", "hazardous materials", "toxic substances" or "hazardous wastes" in The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601, et seq.), including amendments contained in the Superfund Amendments and Reauthorization Act of 1986 (P.L. 99-499, 42 U.S.C.), The Toxic Substance Control Act of 1976 as amended, (15 U.S.C. §2601 et seq.), The Resource Conservation and Recovery Act, as amended (42 U.S.C. §6901, et seq.), The Hazardous Materials Transportation Act, as amended (49 U.S.C. §1801, et seq.), The Clean Water Act, as amended (33 U.S.C. §1251, et seq.), The Clean Air Act, as amended (42 U.S.C. §7401 et seq.), any so-called "Superfund" or "Superlien" law or any other applicable federal, state or local law, common law, code, rule, regulation, or ordinance, presently in effect or hereafter enacted, promulgated or implemented.

(iii) "Environmental Liability" means any losses, liabilities, obligations, penalties, charges, fees, claims, litigation demands, defenses, costs, judgments, suits, proceedings, response costs, damages (including consequential damages), disbursements or expenses of any kind or nature whatsoever (including attorneys' fees at trial and appellate levels and experts' fees and disbursements and expenses incurred in investigating, defending against or prosecuting any litigation, claim or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Mortgagee or any of Mortgagee's parent or subsidiary corporations, and their affiliates, shareholders, directors, officers, employees, and agents (collectively "Affiliates") in connection with or arising from:

a. any Hazardous Material on, in, under or affecting all or any portion of the Mortgaged Premises, the groundwater, or any surrounding areas;



b. any misrepresentation, inaccuracy or breach of any warranty, covenant and agreement contained or referred to in this Paragraph;

c. any violation or claim of violation by Mortgagor of any Environmental Laws;

d. the imposition of any lien for damages caused by, or the recovery of any costs for, the cleanup, release or threatened release of Hazardous Material;

e. the costs of removal of any and all Hazardous Material from all or any portion of the Mortgaged Premises or any surrounding areas; and

f. costs incurred to comply, in connection with all or any portion of the Mortgaged Premises or any surrounding areas, with all Environmental Laws with respect to Hazardous Material.

(b) Representations and Warranties. Mortgagor hereby represents and warrants to Mortgagee that to the best of Mortgagor's knowledge upon due inquiry:

(i) Compliance. The Mortgaged Premises (including underlying groundwater and areas leased to tenants, if any), and the use and operation thereof, are currently in compliance with all applicable Environmental Laws. All required governmental permits and licenses are in effect, and Mortgagor is in compliance therewith. All Hazardous Material generated or handled on the Mortgaged Premises, if any, have been disposed of in a lawful manner.

(ii) Absence of Hazardous Material. No generation, manufacture, storage, treatment, transportation or disposal of Hazardous Material has occurred nor is occurring on or from the Mortgaged Premises. No environmental or public health or safety hazards currently exist with respect to the Mortgaged Premises or the business or operations conducted thereon. No above or underground storage tanks (including petroleum storage tanks) are present on or under the Mortgaged Premises.

(iii) Proceedings and Actions. There are no pending or threatened: (a) actions or proceedings by any governmental agency or any other entity regarding public health risks or the environmental condition of the Mortgaged Premises, or the disposal or presence of Hazardous Material, or regarding any Environmental Laws; or (b) liens or governmental actions, notices of violations, notices of noncompliance or other proceedings of any kind that could impair the value of the Mortgaged Premises, or the priority of this Mortgage lien or of any of the other documents or instruments now or hereafter given as security for the indebtedness hereby secured.

(c) Mortgagor's Covenants. Mortgagor hereby covenants and agrees with Mortgagee as follows:

(i) Compliance. The Mortgaged Premises and the use and operation thereof shall comply with all Environmental Laws. All required governmental permits and licenses shall remain in effect and Mortgagor shall comply therewith. All Hazardous Material present, handled or generated on the Mortgaged Premises will be disposed of in a lawful manner. Mortgagor will satisfy all requirements of applicable Environmental Laws for the maintenance and removal of all underground storage tanks on the Mortgaged Premises, if any. Without limiting the foregoing, all Hazardous Material shall be handled in compliance with all applicable Environmental Laws.

(ii) Absence of Hazardous Material. No Hazardous Material shall be introduced to or handled on the Mortgaged Premises; provided, however, that Hazardous Materials customarily used in the construction of buildings may be used at the Mortgaged Premises so long as the introduction, use and disposition thereof comply with all applicable Environmental Laws and the quantities thereof are normal for similar construction.

(iii) Proceedings and Actions. Mortgagor shall immediately notify Mortgagee and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports or notices relating to the condition of the Mortgaged Premises or compliance with Environmental Laws. Mortgagor shall promptly cure and have dismissed any such actions and proceedings to the satisfaction of Mortgagee. Mortgagor shall keep the Mortgaged Premises free of any lien imposed pursuant to any Environmental Laws.

(iv) Environmental Audit. Mortgagor shall provide such information and certifications which Mortgagee may reasonably request from time to time to insure Mortgagor's compliance with this Paragraph. To investigate Mortgagee's compliance with Environmental Laws and with this Paragraph, Mortgagee shall have the right, but no obligation, at any time when Mortgagee, in its reasonable judgment, deems appropriate, to enter upon the Mortgaged Premises, take samples, review Mortgagor's books and records, interview Mortgagee's employees and officers, and conduct similar activities. Mortgagor shall cooperate in the conduct of such an audit.

(d) Mortgagee's Right to Rely. Mortgagee is entitled to rely upon Mortgagor's representations and warranties contained in this Paragraph despite any independent investigations by Mortgagee or its consultants; provided, however, that in the event that Mortgagee obtains actual knowledge that a representation or warranty previously made by Mortgagor is not correct, then Mortgagee may not rely upon such incorrect representation or warranty of such Mortgagor in pursuing Mortgagee's subsequent course of action as to the matter represented, provided, however,



that Mortgagee shall retain all of its rights and remedies against Mortgagor as a result of the breach of the representation or warranty found to be incorrect. The Mortgagor shall take reasonable actions to determine for itself, and to remain aware of, the environmental condition of the Mortgaged Premises and shall have no right to rely upon any environmental investigations or findings made by Mortgagee or its consultants.

(e) Indemnification. Mortgagor agrees to indemnify, defend (at trial and appellate levels and with counsel reasonably acceptable to Mortgagee and at Mortgagor's sole cost) and hold Mortgagee and its Affiliates free and harmless from and against Mortgagee's Environmental Liability. The foregoing indemnity shall survive satisfaction of the loan evidenced by the Note and any transfer of the Mortgaged Premises to Mortgagee by voluntary transfer, foreclosure or by a deed in lieu of foreclosure. This indemnification shall not apply to any liability incurred by Mortgagee as a direct result of affirmative actions of Mortgagee as owner and operator of the Mortgaged Premises after Mortgagee has acquired title to the Mortgaged Premises and which actions are the sole and direct cause of damage resulting from the introduction and initial release of a Hazardous Material upon the Mortgaged Premises by Mortgagee; PROVIDED, HOWEVER, this indemnity shall otherwise remain in full force and effect, including, without limitation, with respect to Hazardous Material which is discovered or released at the Mortgaged Premises after Mortgagee acquires title to the Mortgaged Premises but which was not actually introduced at Mortgaged Premises by Mortgagee, with respect to the continuing migration or release of Hazardous Material previously introduced at or near the Mortgaged Premises and with respect to all substances which may be Hazardous Material and which are situated at the Mortgaged Premises prior to Mortgagee taking title but are removed by Mortgagee subsequent to such date.

(f) Waiver. Mortgagor, its successors and assigns, hereby waives, releases and agrees not to make any claim or bring any cost recovery action against Mortgagee under CERCLA or any state equivalent, or any similar law now existing or hereafter enacted. It is expressly understood and agreed that to the extent that Mortgagee is strictly liable under any Environmental Laws, Mortgagor's obligation to Mortgagee under this indemnity shall likewise be without regard to fault on the part of Mortgagor with respect to the violation or condition which results in liability to Mortgagee.

(g) Interest. Any amount claimed hereunder by Mortgagee, not paid by Mortgagor within 30 days after written demand from Mortgagee with an explanation of the amounts claimed, shall bear interest at a rate per annum equal to the Default Interest Rate under the Note.

18. Transfer of the Mortgaged Premises. For the purposes of (i) protecting Mortgagee's security; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; and (iii) keeping the Mortgaged Premises free of subordinate financing liens,



Mortgagor shall not permit or suffer to occur any sale, assignment, conveyance, mortgage (other than the Bank Mortgage), lease (other than apartment leases entered into in the ordinary course of business), pledge, encumbrance or other transfer of, or the granting of any option in, or any contract for any of the foregoing (on an installment basis or otherwise) pertaining to:

(i) the Mortgaged Premises, any part thereof, or any interest therein; or

(ii) any interest in Mortgagor;

whether involuntary or by operation of law or otherwise, without the prior written consent of Mortgagee having been obtained to such sale, assignment, conveyance, mortgage, lease, option, pledge, encumbrance or other transfer. Mortgagor agrees that in the event the ownership of the Mortgaged Premises, any interest therein or any part thereof becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal in any way with such successor or successors in interest with reference to this Mortgage, the Note, and any other document evidencing the indebtedness secured hereby, without in any way vitiating or discharging Mortgagor's liability hereunder or under any other document evidencing the indebtedness secured hereby. No sale of the Mortgaged Premises, forbearance granted to any person with respect to this Mortgage, or extension to any person of the time for payment of the Note given by Mortgagee shall operate to release, discharge, modify, change or affect the liability of Mortgagor, either in whole or in part, except to the extent specifically agreed in writing by Mortgagee. Without limitation of the foregoing, in any event in which the written consent of Mortgagee is required in this Paragraph 18, Mortgagee may condition its consent upon any combination of (i) the payment of compensation to be determined by Mortgagee, (ii) the increase of the interest rate payable under the Note, (iii) the shortening of maturity of the Note, and (iv) other modifications of the terms of the Note or the other instruments evidencing the indebtedness secured hereby.

Without limitation of the foregoing, (i) in any event in which Mortgagee's consent is requested in accordance with the terms of this Paragraph 18, Mortgagor shall pay all expenses incurred by Mortgagee, including reasonable attorneys' fees, in connection with the processing of such request, and (ii) the consent of Mortgagee to any transfer of the Mortgaged Premises shall not operate to release, discharge, modify, change or affect the liability of Mortgagor, either in whole or in part.

19. Books and Records. Mortgagee, its officers, employees and representatives shall have the right at any reasonable time to examine, copy and make extracts of the books and records of Mortgagor. Such books and records shall be made available to Mortgagee, its officers, employees, agents and representatives at all reasonable times at Mortgagor's corporate offices or at such other location as Mortgagee shall approve. Mortgagor agrees to furnish to Mortgagee not more than thirty (30) days following

written request from Mortgagee such other reports, financial statements and other financial information concerning Mortgagor as Mortgagee may from time to time request.

20. Subordination. The indebtedness secured hereby constitutes "Subordinated Debt", as defined in that certain Subordination Agreement ("Subordination Agreement") of even date herewith by and among Mortgagor, Mortgagee and Bank. Notwithstanding anything contained in any Loan Document to the contrary, except as Bank may hereafter otherwise expressly agree in writing, Mortgagee shall have no right to take any action with respect to enforcement of any remedies of Mortgagee under the Purchase Contract, the Note or this Mortgage unless and until all of the "Senior Debt" as defined in the Subordination Agreement has been paid in full. The Mortgagee agrees to enter into any subordination agreement or intercreditor agreement that the Bank or any successor thereto or refinancing creditor whose debt will be a Permitted Exception may reasonably request.

21. [Intentionally Omitted.]

22. Reporting. Mortgagor shall furnish to Mortgagee, within fifteen (15) days of the end of each calendar quarter, the rent roll and operating statements with respect to the Mortgaged Premises for each such calendar quarter, certified to be true and correct by the president of the general partner of Mortgagor.

23. Events of Default. Any one or more of the following shall constitute an "Event of Default" hereunder:

(a) Default in making payment when due (whether by lapse of time, acceleration, or otherwise) of the principal of or interest on the Note or any other indebtedness hereby secured and failure to cure such default within one day of written notice thereof;

(b) Any violation of Paragraph 8 or any violation of Paragraph 18 hereof;

(c) The Mortgaged Premises is abandoned by the Mortgagor;

(d) Default in the observance or performance of any other covenant, condition, agreement or provisions hereof or of the Note or any additional Loan Document which is not remedied within thirty (30) days after written notice thereof to Mortgagor by Mortgagee; provided, however, that if such default by its nature cannot be cured within said thirty (30) days and Mortgagor so notifies Mortgagee and promptly initiates and diligently proceeds to cure such default, the period for curing such default shall be extended on a per diem basis for up to an additional ninety (90) days;

(e) Default under the Bank Mortgage that is not cured within any applicable grace period;

(f) Any representation or warranty made by the Mortgagor in the Note or any Loan Documents or in any statement or certificate furnished pursuant hereto or thereto proves untrue in any material respect as of the date of the issuance or making thereof;

(g) Mortgagor or any general partner of Mortgagor (a "Constituent Entity") becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee, custodian or receiver for itself or for the major part of its property;

(h) Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other proceedings for relief under any bankruptcy laws or laws for the relief of debtors are instituted voluntarily by or involuntarily against the Mortgagor or any Constituent Entity and, if instituted involuntarily against Mortgagor or any Constituent Entity, are not dismissed within sixty (60) days after such institution; or

(i) Any judgment or judgments, writ or writs or warrant or warrants of attachment or any similar process or processes in an aggregate amount in excess of \$100,000.00 shall be entered or filed against Mortgagor or any Constituent Entity, or against any of their respective property or assets and remains unsatisfied, unvacated, unbonded or unstayed for a period of thirty (30) days.

24. Remedies. When any Event of Default has happened and is continuing (regardless of the pendency of any proceeding which has or might have the effect of preventing Mortgagor from complying with the terms of this instrument) and in addition to such other rights as may be available under applicable law, or under any other Loan Document, but subject at all times to any mandatory legal requirements:

(a) Acceleration. Mortgagee may, by written notice to Mortgagor, declare the Note and all unpaid indebtedness hereby secured, including interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind.

(b) Uniform Commercial Code. Mortgagee shall, with respect to any part of the Mortgaged Premises constituting property of the type in respect of which realization on a lien or security interest granted therein is governed by the Uniform Commercial Code, have all the rights, options and remedies of a secured party under the Uniform Commercial Code of Indiana, including without limitation, the right to the



possession of any such property or any part thereof, and the right to enter with legal process any premises where any such property may be found. Any requirement of said Code for reasonable notification shall be met by mailing written notice to Mortgagor at its address above set forth at least ten (10) days prior to the sale or other event for which such notice is required. The expenses of retaking, selling and otherwise disposing of said property, including reasonable attorneys' fees and legal expenses incurred in connection therewith, shall constitute so much additional indebtedness hereby secured and shall be payable upon demand with interest at the Default Interest Rate.

(c) Foreclosure. Mortgagee may proceed to protect and enforce the rights of Mortgagee hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness hereby secured in the decree of sale, all expenditures and expenses authorized by the Indiana Mortgage Foreclosure Law, et seq., as from time to time amended (the "Act") and all other reasonable expenditures and out-of-pocket expenses which may be paid or incurred by or on behalf of Mortgagee for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Premises. All expenditures and expenses of the nature mentioned in this Paragraph, and such other expenses and fees as may be incurred in the protection of the Mortgaged Premises and rents and income therefrom and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Mortgaged Premises, including bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional indebtedness hereby secured and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Interest Rate until paid.

(d) Appointment of Receiver. Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through it, and

without regard to the solvency or insolvency of Mortgagor or the then value of the Mortgaged Premises, be entitled to have a receiver appointed pursuant to the Act of all or any part of the Mortgaged Premises and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(e) Taking Possession, Collecting Rents, Etc. Upon demand by Mortgagee after the occurrence of an Event of Default, Mortgagor shall surrender to Mortgagee and Mortgagee may enter and take possession of the Mortgaged Premises or any part thereof personally, by its agents or attorneys or be placed in possession pursuant to court order as mortgagee in possession or receiver as provided in the Act, and Mortgagee, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver as provided in the Act may enter upon and take and maintain possession of all or any part of the Mortgaged Premises, together with all documents, books, records, papers, and accounts of Mortgagor relating thereto, and may exclude Mortgagor and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor, or in its own name as Mortgagee and under the powers herein granted:

(i) hold, operate, manage and control all or any part of the Mortgaged Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Mortgaged Premises, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;

(ii) cancel or terminate any lease or sublease of all or any part of the Mortgaged Premises for any cause or on any ground that would entitle Mortgagor to cancel the same;

(iii) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Premises made subsequent to this Mortgage without Mortgagee's prior written consent;

(iv) extend or modify any then existing leases and make new leases of all or any part of the Mortgaged Premises, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the loan evidenced by the Note and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Mortgaged Premises are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness hereby secured, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

(v) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Premises as may seem judicious to Mortgagee, to insure and reinsure the Mortgaged Premises and all risks incidental to Mortgagee's possession, operation and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom; and

(vi) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Premises, to the payment of taxes, premiums and other charges applicable to the Mortgaged Premises, or in reduction of the indebtedness hereby secured in such order and manner as Mortgagee shall select.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Premises. The right to enter and take possession of the Mortgaged Premises and use any personal property therein, to manage, operate, conserve and improve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any reasonable receiver's fees, counsel fees, costs and agent's compensation) incurred



pursuant to the powers herein contained shall be secured hereby, which expenses Mortgagor promises to pay upon demand together with interest at the rate applicable to the Note at the time such expenses are incurred. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any rents actually received by Mortgagee. Without taking possession of the Mortgaged Premises, Mortgagee may, in the event the Mortgaged Premises become vacant or are abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Premises (including hiring watchmen therefor) and all reasonable costs incurred in so doing shall constitute so much additional indebtedness hereby secured payable upon demand with interest thereon at the Default Interest Rate.

25. Compliance with Indiana Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all reasonable expenses incurred by Mortgagee to the extent reimbursable under of the Act (or any successor provisions), whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Paragraphs 27(b), 27(c) or 30 of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

26. Waiver of Right to Redeem - Waiver of Appraisalment, Valuation, Etc. Mortgagor shall not and will not apply for or avail itself of any reinstatement, appraisalment, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Mortgaged

Premises may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Mortgagee may determine. Mortgagee shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Mortgagee so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Mortgagee with the amount payable to Mortgagee out of the net proceeds of such sale. In the event of any such sale, the Note and the other indebtedness hereby secured, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Mortgagor acknowledges that the Mortgaged Premises does not constitute agricultural real estate, as defined in the Act (or any successor provision), or residential real estate, as defined in the Act (or any successor provision). To the fullest extent permitted by law, Mortgagor, pursuant to the Act, hereby voluntarily and knowingly waives any and all rights of redemption on behalf of Mortgagor, and each and every person acquiring any interest in, or title to the Mortgaged Premises described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law.

27. Costs and Expenses of Foreclosure. In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, Torrens certificates and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Premises, and all of which expenditures shall become so much additional indebtedness secured hereby which Mortgagor agrees to pay and all of such shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Interest Rate.

28. Insurance After Foreclosure. Wherever provision is made in the Mortgage for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of the Mortgagee shall continue in the Mortgagee as judgment creditor or mortgagee until confirmation of sale. Upon confirmation of sale, Mortgagee shall be empowered to assign all policies of insurance to the purchaser at the sale.

29. Protective Advances. All reasonable advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to or any successor provisions:

(a) all advances by Mortgagee in accordance with the terms of this Mortgage to: (i) preserve or maintain, repair, restore or rebuild the improvements upon the Mortgaged Premises; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in the Act;

(b) payments by Mortgagee of: (i) installments of principal, interest or other obligations when due in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Premises or any part thereof; (iii) any other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in the Act;

(c) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(d) reasonable attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Mortgage as referred to in the Act; (ii) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of this Mortgage or arising from the interest of the Mortgagee hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;

(e) Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in the Act;



(f) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Mortgage;

(g) expenses deductible from proceeds of sale as referred to in the Act;

(h) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (a) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation of maintaining existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Premises imposed by the Act; (b) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (c) payments required or deemed by Mortgagee to be for the benefit of the Mortgaged Premises under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Premises; (d) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Premises is a member in any way affecting the Mortgaged Premises; and (e) pursuant to any lease or other agreement for occupancy of the Mortgaged Premises.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Interest Rate.

Pursuant to the Act, this Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded.

All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

(i) the amount of indebtedness secured by this Mortgage at any time;

(ii) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(iii) amounts deductible from sale proceeds pursuant to the Act;

(iv) the application of income in the hands of any receiver or mortgagee in possession; and

(v) the computation of any deficiency judgment pursuant to the Act.

30. Application of Proceeds. The proceeds of any foreclosure sale of the Mortgaged Premises shall be distributed in the following order of priority: First, the reasonable expenses of sale; Second, all costs and expenses incident to the foreclosure or other proceedings permitted under the Act or hereunder; Third, to all other items which under the terms hereof constitute indebtedness hereby secured in addition to that evidenced by the Note with interest thereon as herein provided; Fourth, to all interest on the Note; Fifth, to all principal on the Note with any surplus to Mortgagor unless directed otherwise by a court of competent jurisdiction.

31. Mortgagee's Remedies Cumulative - No Waiver. No remedy or right of Mortgagee shall be exclusive but shall be cumulative and in addition to every other remedy or right now or hereafter existing at law or in equity or by statute. No delay in the exercise or omission to exercise any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee. Any suit commenced to enforce this Mortgage shall be commenced, to the extent legally permissible, in a court located in Fort Wayne, Indiana.

32. Mortgagee Party to Suits. If Mortgagee shall be made a party to or shall intervene in any action or proceeding affecting the Mortgaged Premises or the title thereto or the interest of Mortgagee under this Mortgage (including probate and bankruptcy proceedings), or if Mortgagee employs an attorney to collect any or all of the indebtedness hereby secured or to enforce any of the terms hereof or realize hereupon or to protect the lien hereof, or if Mortgagee shall incur any costs or expenses in preparation for the commencement of any foreclosure proceeding or for the defense of any threatened suit or proceeding which might affect the Mortgaged Premises or the security hereof, whether or not any such foreclosure or other suit or proceeding shall be actually commenced, then in any such case, Mortgagor agrees to pay to Mortgagee, immediately and without demand, all reasonable costs, charges, expenses and attorneys' fees incurred by Mortgagee in any such case, and the same shall constitute so much additional

indebtedness hereby secured payable upon demand with interest at the Default Interest Rate.

33. Modifications Not To Affect Lien. Mortgagee, without notice to anyone, and without regard to the consideration, if any, paid therefor, or the presence of other liens on the Mortgaged Premises, may in its discretion release any part of the Mortgaged Premises or any person liable for any of the indebtedness hereby secured, may extend the time of payment of any of the indebtedness hereby secured and may grant waivers or other indulgences with respect hereto and thereto, without in any way affecting or impairing the liability of any party liable upon any of the indebtedness hereby secured or the priority of the lien of this Mortgage upon all of the Mortgaged Premises not expressly released, and may agree with Mortgagor to modifications to the terms and conditions contained herein or otherwise applicable to any of the indebtedness hereby secured (including modifications in the rates of interest applicable thereto).

34. Notices. All notices or other communications required or permitted hereunder shall be (a) in writing and shall be deemed to be given when either (i) delivered in person, (ii) three business days after deposit in a regularly maintained receptacle of the United States mail as registered or certified mail, postage prepaid, (iii) when received if sent by private courier service or by facsimile transmission, or (iv) on the day on which the party to whom such notice is addressed refuses delivery by mail or by private courier service and (b) addressed as follows:

If to Mortgagee: City of Fort Wayne - Department  
of Community Development  
1 Main Street, Room 830  
Fort Wayne, Indiana 46802

With copy to: David Boyer, Esq.  
Helmke Beam Boyer and Wagner  
300 Metro Building  
Fort Wayne, Indiana 46802

If to Mortgagor: CERC - McMillen Apartments Limited  
Partnership  
5519 South Dorchester  
Chicago, Illinois 60637

With copy to: Scott I. Canel & Associates  
10 South LaSalle Street  
Suite 3440  
Chicago, Illinois 60603  
Attn: Scott I. Canel



or to each such party at such other addresses as such party may designate in a written notice to the other parties.

35. Partial Invalidity. All rights, powers and remedies provided herein are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Mortgage shall be held to be invalid or unenforceable, the validity and enforceability of the other terms of this Mortgage shall in no way be affected thereby.

36. Successors and Assigns. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Mortgage contained by or on behalf of Mortgagor, or by or on behalf of Mortgagee, shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not.

37. Default Interest Rate. For purposes of this Mortgage, "Default Interest Rate" shall mean the "Default Interest Rate" as defined in the Note.

38. Headings. The headings in this instrument are for convenience of reference only and shall not limit or otherwise affect the meaning of any provision hereof.

39. Changes, Etc. This instrument and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

40. Venue/Waiver of Jury Trial. MORTGAGOR IRREVOCABLY AGREES THAT, SUBJECT TO MORTGAGEE'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT ARISING OUT OF, OR FROM, OR RELATED TO, THIS MORTGAGE OR THE NOTE SHALL BE LITIGATED ONLY IN COURTS HAVING A SITUS WITHIN FORT WAYNE, INDIANA. MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SUCH COUNTY. MORTGAGOR HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH. MORTGAGOR HEREBY IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH MORTGAGOR AND MORTGAGEE ARE PARTIES. MORTGAGOR HEREBY WAIVES PERSONAL SERVICE OF PROCESS IN ANY SUIT COMMENCED IN CONNECTION WITH THIS INSTRUMENT, AGREES AND CONSENTS THAT SERVICE OF PROCESS BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO THE LAST KNOWN ADDRESS OF MORTGAGOR, SHALL BE SATISFACTORY SERVICE OF PROCESS IN CONNECTION WITH ANY SUIT BROUGHT IN CONNECTION WITH THIS INSTRUMENT AND AGREES THAT SUCH SERVICE OF PROCESS SHALL BE DEEMED COMPLETED TEN (10) DAYS AFTER MAILING THEREOF.

41. Governing Law. This Mortgage shall be governed by and construed under the laws of the State of Indiana.

42. Nonrecourse Nature of Payments. Neither the Mortgagor, nor any general or limited partner of the Mortgagor, nor any incorporator, director, shareholder or officer of any partner of the Mortgagor shall have any personal liability for any sum payable hereunder. The covenant of the Mortgagor to pay amounts hereunder is for the sole purpose of establishing the existence of the indebtedness set forth in the Note. However, it is a condition of the covenants set forth herein that in the event of default under the terms hereof, Mortgagee shall take no action against the Mortgagor personally nor against its general or limited partners nor any or their incorporators, directors, shareholders or officers, except such as may be necessary to subject to the satisfaction of the indebtedness set forth in the Note from the Property described in this Mortgage and any chattels appurtenant to the use thereof.

43. Entire Agreement. This Mortgages and the Exhibits hereto, which are incorporated herein by reference, represent the entire agreement between the parties with respect to the subject matter hereof.

44. Permitted Exceptions. The Bank Mortgage, the Loan secured thereby and any refinancings of such Loan, from time to time, including without limitation of the foregoing, any refinancing which (i) increases the principal amount secured by such Bank Mortgage, (ii) changes the interest rate or the term of the loan, or (iii) otherwise materially changes the terms of such lan, shall be a Permitted Exception as such term is used in the foregoing mortgage; provided, however, that in the case of any such refinanced indebtedness the annual debt service on such refinanced debt shall not exceed \$220,000.00 per year. Upon any such refinancing, the term "Bank" as used in this Mortgage shall refer to the creditor refinancing such indebtedness, and the term "Bank Mortgage" as used in this Mortgage shall refer to the mortgage securing such refinanced indebtedness, the terms of which mortgage shall be as mutually agreed by the Mortgagor and such new creditor.

IN WITNESS WHEREOF, the undersigned have caused these presents to be signed as of the day and year first above written.

CERC - MCMILLEN APARTMENTS LIMITED PARTNERSHIP  
an Illinois limited partnership

By: Community Economic Redevelopment  
Corporation, an Illinois not for  
profit corporation, its sole  
general partner

By: \_\_\_\_\_  
Its: \_\_\_\_\_



STATE OF ILLINOIS       )  
                              ) SS.  
COUNTY OF COOK         )

I HEREBY CERTIFY that on this \_\_\_\_th day of \_\_\_\_\_, 1996 before me personally appeared \_\_\_\_\_, the President of Community Economic Redevelopment Corporation, an Illinois corporation, the sole general partner of CERC- MCMILLEN APARTMENTS LIMITED PARTNERSHIP, an Illinois limited partnership, to me known to be the same person who signed the foregoing instrument as his free act and deed as such officer of the general partner of the limited partnership for the use and purpose therein mentioned, and that the said instrument is the act and deed of said limited partnership.

WITNESS my signature and official seal at Chicago in the County of Cook and State of Illinois the day and year last aforesaid.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

EXHIBIT "A"

LEGAL DESCRIPTION

\*\*\*PARCEL 1:

Permanent Real Estate Index No. 65-2029-0240 through 65-2029-0246

Common Address: McMillen Apartments, Fort Wayne, Indiana

EXHIBIT "B"

PERMANENT IDENTIFICATION NUMBERS

65-2029-0240 through 65-2029-0246



EXHIBIT "C"

PERMITTED EXCEPTIONS

The Bank Mortgage, the Loan secured thereby and any refinancings of such Loan, from time to time, including without limitation of the foregoing, any refinancing which (i) increases the principal amount secured by such Bank Mortgage, (ii) changes the interest rate or the term of the loan, or (iii) otherwise materially changes the terms of such loan, shall be a Permitted Exception as such term is used in the foregoing mortgage; provided, however, that in the case of any such refinanced indebtedness the annual debt service on such refinanced debt shall not exceed \$220,000.00 per year.

\$1,200,000.00

Fort Wayne, Indiana  
October 1, 1996

## **SUBORDINATED MORTGAGE NOTE AND LOAN AGREEMENT**

THIS SUBORDINATED MORTGAGE NOTE AND LOAN AGREEMENT ("Note") is made in Fort Wayne, Indiana as of October 1, 1996, in consideration for the loan of One Million Two Hundred Thousand and 00/100 Dollars (\$1,200,000.00) with interest as provided herein.

### **1. Recitals.**

A. CERC - McMillen Apartments Limited Partnership, an Illinois limited partnership ("Maker"), has purchased with the assistance of the City of Fort Wayne, Indiana (the "Lender") that certain parcel of real property (the "Property") located in Fort Wayne, Indiana and commonly known as McMillen Park Apartments, Fort Wayne Indiana. This Note is given in consideration for a loan made by the Lender to the Maker to pay the balance of the purchase price payable by the Maker for the Property and/or certain acquisition related costs. Lender and any subsequent holder from time to time of this Note is referred to as "Payee".

B. This Note is secured by a certain Junior Mortgage and Security Agreement with Assignment of Rents ("Mortgage"), dated of even date herewith, executed and delivered by Maker to Lender, encumbering certain interests in real and personal property on the Property.

C. The Maker acknowledges that the Lender provided the principal sum of this Note to the Maker pursuant to a loan arrangement between the Lender and the U.S. Department of Housing and Urban Development pursuant to the Section 108 loan program as administered by Lender.

### **2. Payments of Principal and Interest.**

A. Maker hereby promises to pay to the order of Payee the principal sum of One Million Two Hundred Thousand and 00/100 Dollars (\$1,200,000.00), together with interest on the principal amount from time to time outstanding at the rate (the "Base Rate") established by the U.S. Department of Housing and Urban Development ("HUD") upon the sale of the collective 108 security obligation ("Security") by which this loan is financed.

Maker shall pay to the Payee, not less than 10 business days prior to the payment due date as established by HUD, any payments necessary to fund interim interest payments to HUD with respect to the principal amount of this Note prior to the sale of the Security. Maker shall repay Lender for any prepaid interest or transaction fees incurred by Lender in obtaining from HUD the funding used to make the loan represented by this Note. Any credit given by HUD against the principal balance of the loan amount due shall be credited against the unpaid portion of this Note.

On the dates set forth in such Schedule A, attached hereto and made a part hereof, the Maker shall pay to the Payee a principal payment in the amount set forth in Schedule A for such date, together with accrued and unpaid interest on the principal amount from time to time outstanding, in the case of the first such payment, for the period from the date hereof to January 1, 1997, and in the case of all other payments, for the period from the immediately prior payment date to the date of such payment; provided, however, that such payment shall only be made to the extent of 50% of the Maker's Cash Flow, as defined below, with respect to the six months immediately preceding such payment date, up to a maximum total annual payment of \$114,000. Accrued but unpaid interest shall remain an obligation of the Maker but shall not be added to the principal amount of this Note. On the Maturity Date, as defined below, Maker shall pay to Payee the entire outstanding principal balance of this Note, together with all accrued unpaid interest thereon.

As used herein, the term "Maturity Date" shall mean either: (i) July 1, 2016 or (ii) such earlier date on which the entire outstanding principal balance, together with accrued and unpaid interest thereon are due and payable by reason of the acceleration of the maturity of this Note.

As used herein, the term "Cash Flow" shall mean cash generated, during the applicable period, from the operation of Property or any other improvements that may be placed upon such real estate less, with respect to such period, (1) all cash expenditures of Maker with respect to such real estate and improvements, including without limitation, utility costs, payroll, and management fees paid pursuant to all management agreements entered into on, prior to or after the date hereof, but excluding any incentive management fees payable to Community Economic Redevelopment Corporation, (2) principal, interest and other payments with respect to the debt of the Maker to \_\_\_\_\_ Bank secured by a first mortgage on the Property and all refinancing thereof permitted under the Mortgage (the "Bank Debt"), but excluding all other indebtedness of the Maker for money borrowed, (3) capital contributions and loan proceeds, (4) capital expenditures required to maintain the Property in the condition in which it will be placed following the rehabilitation of the Property currently being undertaken by the Maker, and (5) reasonable reserves for (i) liabilities not yet due and payable with respect to the Property (ii) repairs and replacements and (iii) working capital reasonably required in the operation of the business of the Maker in the amount of \$53,500.00. In the event that the Property is sold, all expenditures incurred by the Maker prior to the sale or in connection with such sale and the Bank Debt shall be paid prior to any payments being made with respect to the Note.

B. After an Event of Default hereunder (as hereinafter defined), any sums remaining unpaid hereunder shall bear interest at the "Default Interest Rate". The "Default Interest Rate" shall mean the sum of the Base Rate plus three percent (3%) per annum in excess of the Base Rate.

C. Interest shall be computed on the basis of a three hundred sixty (360) day year (based upon the actual days elapsed). All payments on account of the indebtedness evidencing the Note shall first be applied to late charges and costs and fees incurred by Payee in enforcing its rights hereunder or under the Mortgage, next to interest on the unpaid principal balance and the remainder to reduce unpaid principal.



D. If any installment of principal or interest due hereunder, or any monthly deposit for taxes or insurance if required under the Mortgage, shall become overdue for fifteen (15) days after the date when due, the undersigned shall pay to the holder hereof on demand a "late charge" of two cents (\$.02) for each dollar so overdue, in order to defray part of the increased cost of collection occasioned by any such late payment, as liquidated damages and not as a penalty.

E. Payment of all amounts due under this Note shall be made to Payee, at City of Fort Wayne, Indiana - Community Development Department, 1 Main Street, Room 830, Fort Wayne, Indiana, 46802 or such other place as Payee may from time to time designate in writing.

F. Notwithstanding any provisions of this Note or any instrument securing payment of the indebtedness evidenced by this Note to the contrary, it is the intent of Maker and Payee that Payee shall never be entitled to receive, collect or apply, as interest on principal of the indebtedness, any amount in excess of the maximum rate of interest permitted to be charged by applicable law; and if under any circumstance whatsoever, fulfillment of any provision of this Note, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by applicable law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and in the event Payee ever receives, collects or applies as interest any such excess, such amount which would be excess interest shall be deemed a permitted partial prepayment of principal without penalty or premium and treated hereunder as such; and if the principal of the indebtedness secured hereby is paid in full, any remaining excess funds shall forthwith be paid to Maker. In determining whether or not interest of any kind payable hereunder, under any specific contingency, exceeds the highest lawful rate, Maker and Payee shall, to the maximum extent permitted under applicable law, (1) characterize any non-principal payment as an expense, fee or premium rather than as interest and (2) amortize, prorate, allocate and spread to the end such payment so that the interest on account of such indebtedness does not exceed the maximum amount permitted by applicable law. Payee shall not be subject to any penalties provided by any laws for contracting for, charging or receiving interest in excess of the maximum lawful rate.

3. Prepayment. Maker shall have the right to prepay all or any part of the principal balance of this Note without penalty.

4. Refinancing Covenant. Maker covenants to use its best efforts to refinance the Bank Debt and as much of the principal amount of this Note as possible, but not less than \$400,000 of the principal amount of this Note, in a single transaction, on or prior to July 1, 2006; provided however that Maker shall not be required to enter into any such refinancing arrangement which will have a balloon payment or uneven monthly payments or result in annual debt service on such refinanced debt being in an amount greater than the sum of (i) the annual debt service on the Bank Debt and (ii) 50% of the arithmetic average of the Cash Flow for the three calendar years immediately preceding the date of such refinancing; further, provided that Payee shall consent to the entire amount of such refinanced indebtedness being secured by a first mortgage on the Property superior to the mortgage securing this Note. In no event, if as a result of such refinancing any amounts shall remain outstanding hereunder, shall the refinancing create any

additional indebtedness, secured by a mortgage with a priority superior to that of City of Fort Wayne under the Mortgage, other than indebtedness to a single lender refinancing solely the Bank Debt and a portion of the principal amount of this Note.

5. Default and Remedies.

A. In the event (i) default is made in the payment of any part of the principal or interest due pursuant to this Note or of any other sums owed pursuant to the terms of this Note or the Mortgage and Maker fails to cure such default within one hundred eighty (180) days of written notice thereof to Maker, or (ii) default is made in the performance or observance of any covenant, agreement, term or condition contained in this Note (other than as specified in clause (i) above), and such default shall continue for one hundred eighty (180) days after written notice thereof to Maker; provided, however, that if such default by its nature cannot be cured within said one hundred eighty (180) days and Maker so notifies Payee and promptly initiates and diligently proceeds to cure such default, the period for curing such default shall be extended for up to an additional one hundred eighty (180) days, or (iii) there shall be a default under the Mortgage (other than as specified in clause (i) above) that is not cured after any applicable grace periods in the Mortgage and within one hundred eighty (180) days after written notice thereof to Maker; provided, however, that if such default by its nature cannot be cured within said one hundred eighty (180) days and Maker so notifies Payee and promptly initiates and diligently proceeds to cure such default, the period for curing such default shall be extended for up to an additional one hundred eighty (180) days, then in the case of any of the defaults set forth above (an "Event of Default"), Payee shall have the option, without demand or notice, to declare the unpaid principal of this Note, together with all accrued interest, and other sums secured by the Mortgage at once due and payable to the extent permitted by law, to foreclose the Mortgage and all other liens or security interests securing the payment of the Note, and to exercise any and all other rights and remedies available at law or in equity or under the Mortgage.

B. The remedies of Payee, as provided herein or in the Mortgage shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of Payee, and may be exercised as often as occasion therefor shall arise. No act of omission or commission of Payee, including specifically any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of the same, such waiver or release to be effected only through a written document executed by Payee and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as continuing, as a bar to, or as a waiver or release of, any subsequent right, remedy or recourse as to a subsequent event.

6. Waiver. Except as otherwise expressly provided herein or in the Mortgage each maker, surety and endorser hereon waives grace, notice, notice of intent to accelerate, notice of default, protest, demand, presentment for payment and diligence in the collection of this Note, and in the filing of suit hereon, and agrees that his or its liability and the liability of his or its heirs, beneficiaries, successors and assigns for the payment hereof shall not be affected or impaired by any release or change in the security or by any increase, modification, renewal or extension of the indebtedness or its mode and time of payment. It is specifically agreed by the



undersigned that the Payee shall have the right at all times to decline to make any such release or change in any security given to secure the payment hereof and to decline to make any such increase, modification, renewal or extension of the indebtedness or its mode and time of payment.

7. Nonpermitted Transfers. Paragraph 18 of the Mortgage provides that any sale, transfer, other alienation or further encumbrance of the premises encumbered thereby (collectively, the "Property"), other than as expressly permitted therein, constitutes an Event of Default thereunder. In such event, the holder of this Note shall have the right to invoke any remedies therein provided including, without limitation, the right to declare immediately due and payable the entire outstanding principal balance of this Note, together with all accrued interest, prepayment premium, if any, and all other sums secured by the Mortgage.

8. Notices. All notices or other communications required or permitted hereunder shall be (a) in writing and shall be deemed to be given when either (i) delivered in person, (ii) three business days after deposit in a regularly maintained receptacle of the United States mail as registered or certified mail, postage prepaid, (iii) when received if sent by private courier service or by facsimile transmission, or (iv) on the day on which the party to whom such notice is addressed refuses delivery by mail or by private courier service, and (b) addressed as follows:

If to Maker: CERC - McMillen Apartments Limited Partnership  
5519 South Dorchester  
Chicago, Illinois 60637

With copy to: Scott I. Canel & Associates  
10 South LaSalle Street  
Suite 3440  
Chicago, Illinois 60603  
Attn: Scott I. Canel

If to Lender: City of Fort Wayne - Department of Community Development  
1 Main Street, Room 830  
Fort Wayne, Indiana 46802

With copy to  
City Attorney: David Boyer, Esq.  
Helmke Beam Boyer and Wagner  
300 Metro Building  
Fort Wayne, Indiana 46802

9. Miscellaneous.

A. The headings of the paragraphs of this Note are inserted for convenience only and shall not be deemed to constitute a part hereof.



B. All payments under this Note shall be payable in lawful money of the United States which shall be legal tender for public and private debts at the time of payment; provided that a check will be deemed sufficient payment so long as it clears when presented for payment. Each payment of principal or interest under this Note shall be paid not later than 4:00 P.M. Fort Wayne, Indiana time on the date due therefor and funds received after that hour shall be deemed to have been received by Payee on the following day. Except as otherwise provided herein, all payments (whether of principal, interest or other amounts) which are applied at any time by Payee to indebtedness evidenced by this Note may be allocated by Payee to principal, interest or other amounts as Payee may determine in Payee's sole discretion.

C. This Note has been made and delivered at Fort Wayne, Indiana.

D. The obligations and liabilities under this Note of the Maker shall be binding upon and enforceable against the Maker and its heirs, legatees, legal representatives, successors and assigns. This Note shall inure to the benefit of and may be enforced by Payee, its successors and assigns.

10. Severability. If any provision of this Note or any payments pursuant to the terms hereof shall be invalid or unenforceable to any extent, the remainder of this Note and any other payments hereunder shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

11. Choice of Laws. This Note shall be governed by and construed in accordance with the laws of the State of Indiana

12. Venue/Waiver of Jury Trial. MAKER IRREVOCABLY AGREES THAT, SUBJECT TO PAYEE'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT ARISING OUT OF, OR FROM, OR RELATED TO, THIS NOTE SHALL BE LITIGATED ONLY IN COURTS HAVING A SITUS WITHIN FORT WAYNE, INDIANA. MAKER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SUCH CITY. MAKER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH. MAKER HEREBY IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH MAKER AND PAYEE ARE PARTIES. MAKER HEREBY WAIVES PERSONAL SERVICE OF PROCESS IN ANY SUIT COMMENCED IN CONNECTION WITH THIS INSTRUMENT, AGREES AND CONSENTS THAT SERVICE OF PROCESS BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO THE LAST KNOWN ADDRESS OF MAKER SHALL BE SATISFACTORY SERVICE OF PROCESS IN CONNECTION WITH ANY SUIT BROUGHT IN CONNECTION WITH THIS INSTRUMENT AND AGREES THAT SUCH SERVICE OF PROCESS SHALL BE DEEMED COMPLETED TEN (10) DAYS AFTER MAILING THEREOF.

13. Nonrecourse Nature of Payments. Neither the Maker, nor any general or limited partner of the Maker, nor any incorporator, director, shareholder or officer of any partner of the

Maker shall have any personal liability for any sum payable hereunder. The covenant of the Maker to pay amounts hereunder is for the sole purpose of establishing the existence of the indebtedness set forth in this Note. However, it is a condition of the covenants set forth herein that in the event of default under the terms hereof, Payee shall take no action against the Maker personally nor against its general or limited partners nor any or their incorporators, directors, shareholders or officers, except such as may be necessary to subject to the satisfaction of the indebtedness set forth in this Note, the Property described in the Mortgage and any chattels appurtenant to the use thereof.

14. Subordination. Maker's payment obligations under this Note constitute "Subordinated Debt", as defined in that certain Subordination Agreement of even date herewith by and among Maker, Lender and \_\_\_\_\_ Bank.

IN WITNESS WHEREOF, Maker has executed, sealed and delivered this Note as of the date and year first above written.

CERC - McMILLEN APARTMENTS LIMITED PARTNERSHIP,  
an Illinois limited partnership

By: Community Economic Redevelopment Corporation,  
an Illinois not-for-profit corporation, its sole general partner

By: \_\_\_\_\_  
Its: \_\_\_\_\_



SCHEDULE A

<u>Year</u>	<u>January 1</u>	<u>July 1</u>
1997	\$15,000	\$15,000
1998	\$15,000	\$15,000
1999	\$17,500	\$17,500
2000	\$17,500	\$17,500
2001	\$20,000	\$20,000
2002	\$20,000	\$20,000
2003	\$22,500	\$22,500
2004	\$25,000	\$25,000
2005	\$25,000	\$25,000
2006	\$27,500	\$27,500
2007	\$30,000	\$30,000
2008	\$30,000	\$30,000
2009	\$32,500	\$32,500
2010	\$35,000	\$35,000
2011	\$37,500	\$37,500
2012	\$40,000	\$40,000
2013	\$42,500	\$42,500
2014	\$45,000	\$45,000
2015	\$50,000	\$50,000
2016	\$52,500	\$52,500